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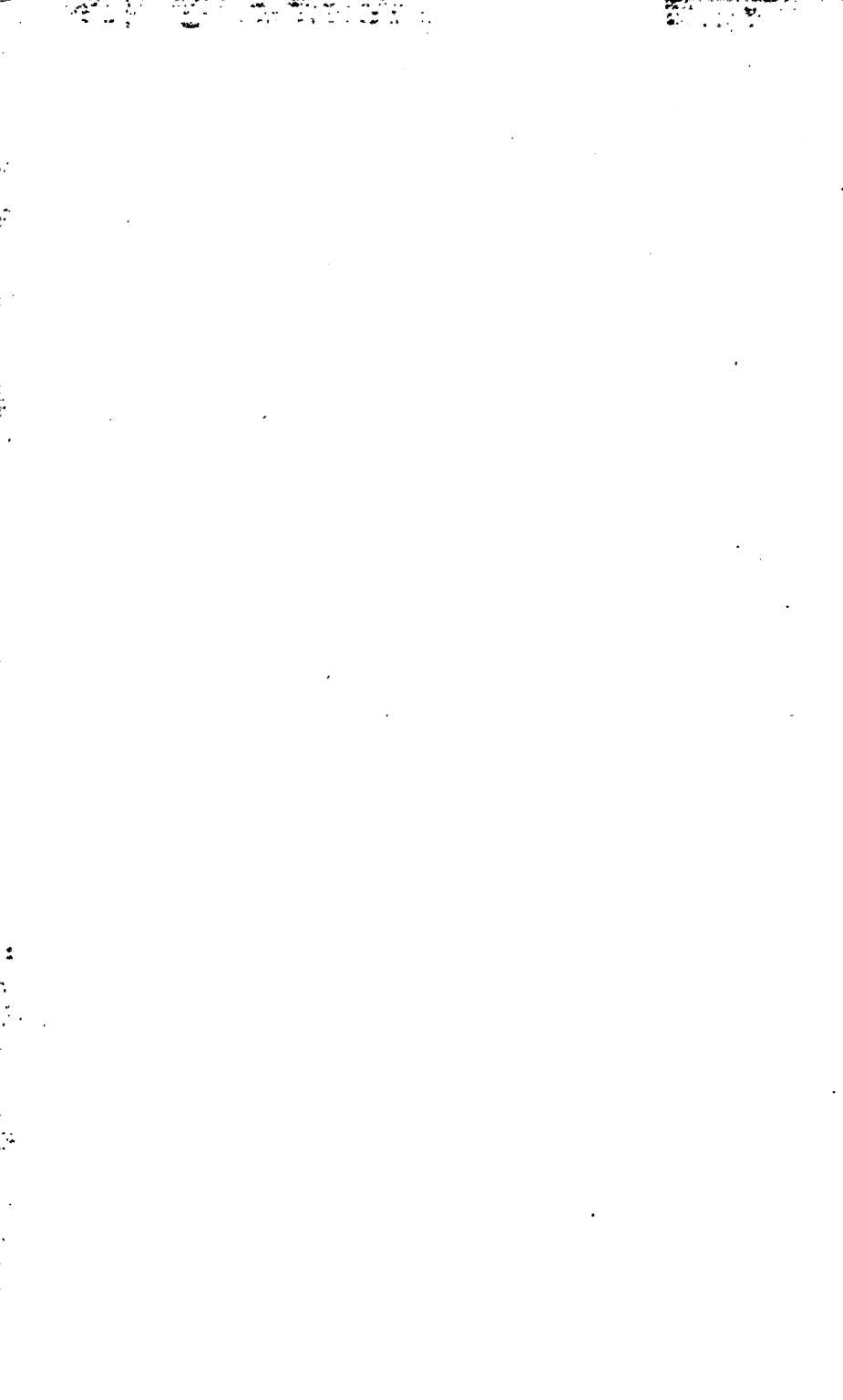
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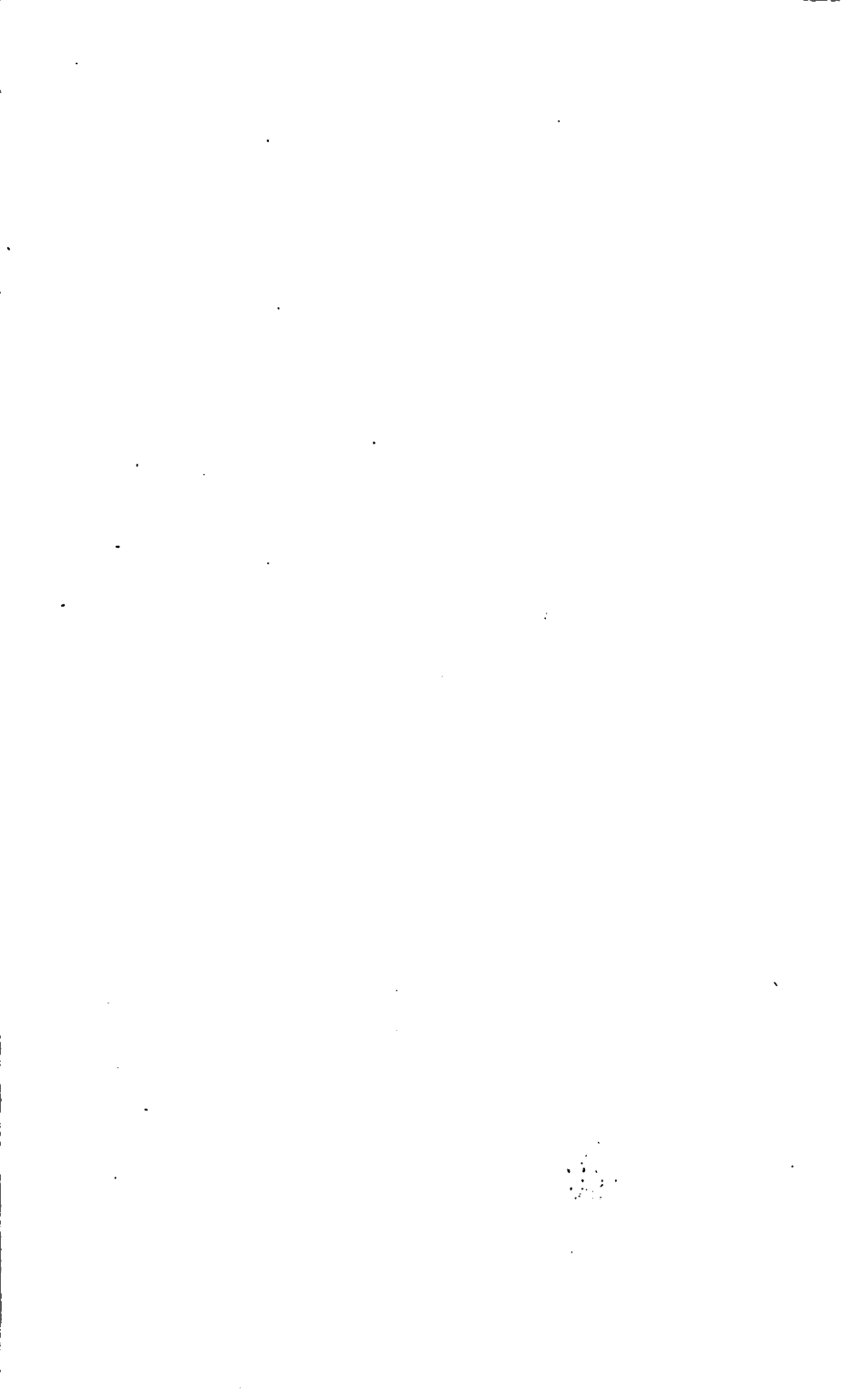
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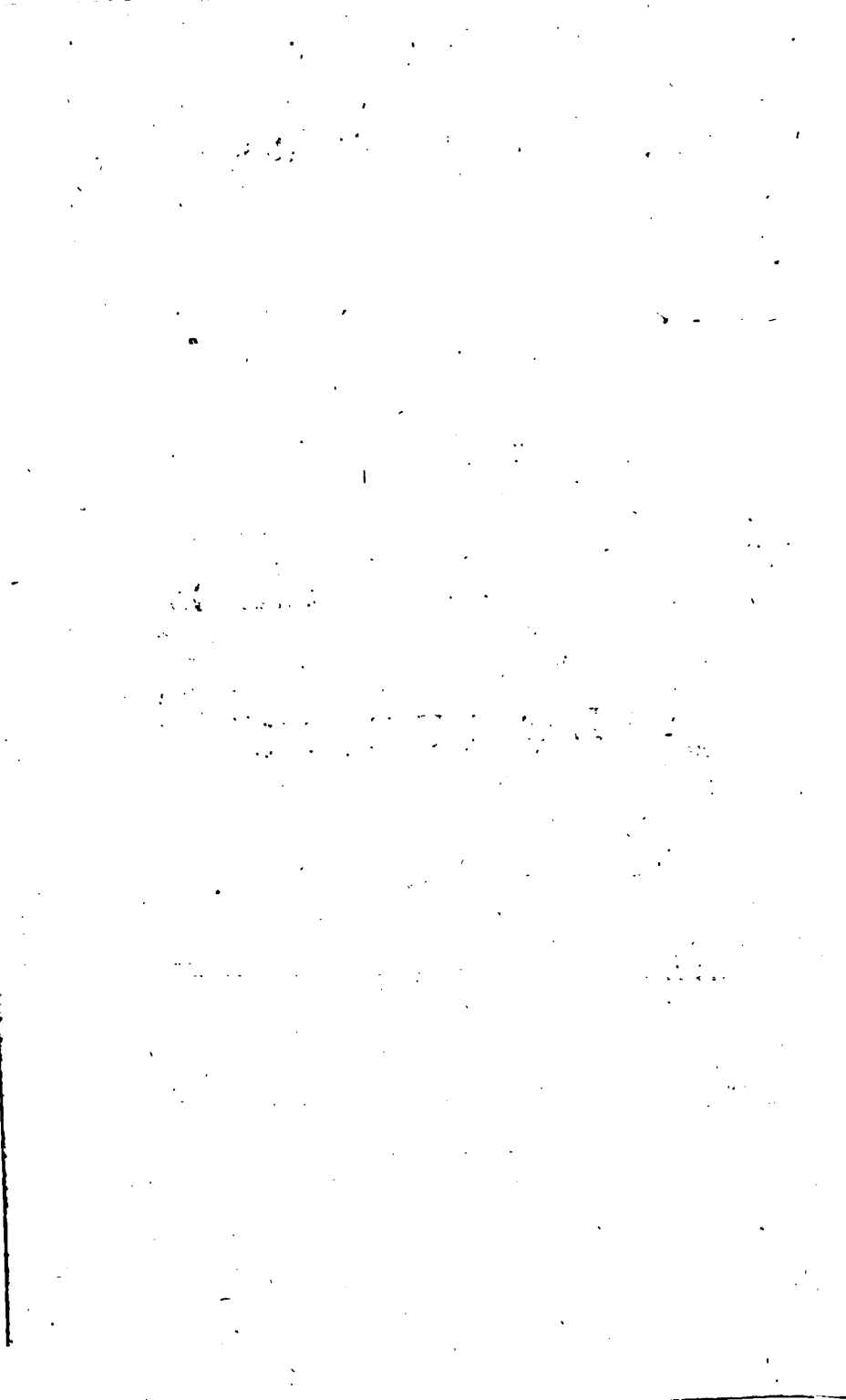




THE

Canadian Freeholder :

DIALOGUE III.



THE
Canadian Freeholder :
IN
THREE DIALOGUES
BETWEEN AN
ENGLISHMAN and a FRENCHMAN,
SETTLED IN CANADA.

SHEWING

The Sentiments of the Bulk of the Freeholders of Canada concerning the late Quebec-Act; with some Remarks on the Boston-Charter Act; and an Attempt to shew the great Expediency of immediately repealing both those Acts of Parliament, and of making some other useful Regulations and Concessions to his Majesty's American Subjects, as a Ground for a Reconciliation with the United Colonies in America.

V O L. III.

L O N D O N :

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and H. PAYNE, in Pall-Mall.

M. DCC. LXXIX.

UNIVERSITY OF LONDON



P R E F A C E.

THIS Third Dialogue of the Canadian Freeholder contains the remaining part of the plan of reconciliation between Great-Britain and her American colonies, which was recommended in the first Dialogue. The principal articles of this plan which were set forth in that first Dialogue were these following; to wit, 1st, To repeal the Quebec-act, which was passed in the year 1774, and which has not only offended the inhabitants of the province of Quebeck itself in a degree that

that can hardly be conceived, but has alarmed all the English provinces in America, and contributed more than, perhaps, any other measure whatsoever, to drive them into the present rebellion against their sovereign;----2dly, To give the Americans satisfaction with respect to the important article of taxation by the authority of the British parliament, by promising not to tax them by that authority till they shall be permitted to send representatives to the British House of Commons;-----3dly, To give them satisfaction also with respect to the security of their charters for the time to come, by repealing the act passed in the year 1774 for altering the charter of the Massachusetts Bay, (which, we have had the satisfaction to see, has since been
done

done by an act passed in the month of March, 1778;) and promising them by resolutions of both houses of parliament, or by an act of parliament to be passed for that purpose, that for the future no changes shall be made in any of their charters without either a petition from the assembly of the province whose charter is proposed to be altered, desiring that some alterations may be made in it, or a complaint before the parliament of Great-Britain of abuses of the powers and privileges contained in the said charter, and a hearing of the agents and counsel of the said province in their defence against such complaint;---4thly, To regulate anew the several offices of civil government in the provinces of America, which have hitherto been granted away by patents

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patents under the great seal of Great-Britain to persons resident in England, with powers to appoint deputies to do the duty of the said offices in America, and which have accordingly been farmed out by the said grantees to such deputies in America for the best annual rents that could be got for them; such as the offices of *Secretary of the Province, Clerk of the Council, Register of Deeds and Patents, or Clerk of the Inrolments of Deeds and Patents, Register of the Court of Chancery, or Clerk of some of the other courts of justice, Provost Marshall, and Naval Officer*;---5thly, To appropriate the king's quit-rents in America to the maintenance of the civil government of the provinces in which they are respectively collected;---and 6thly, To restore to its
original

original destination (to wit, the maintenance of the civil governments and military establishments of the several islands in which it is paid,) the duty of four and a half per cent. upon goods exported from Barbadoes and certain other of the British islands in the West-Indies.—These are the articles of the said plan of reconciliation which are set forth and recommended at large in the said first Dialogue. But it is also therein briefly suggested that it would be expedient to adopt two other measures with respect to the American provinces in order to promote the same good end; which are, “To remove from the minds of the Americans the apprehensions they have hitherto entertained of having bishops established amongst them by the authority of the king or the parliament

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liament

liament of Great-Britain, without the consent of their own assemblies," and "To amend the constitution of the provincial councils in the royal governments of America, (which are governed only by the king's commissions without a charter,) by increasing the number of the members of those councils from 12 to, at least, 24, and making them wholly independent of the governours of their respective provinces, so that they should not be liable to be removed by them, or even suspended by them for a single hour, from the exercise of their power as members of the said councils, upon any pretence whatsoever; though they might still continue liable to be removed by the king himself by his order in his privy council." A full explanation of the grounds

P R E F A C E. xi

grounds and reasons upon which I would recommend these two measures, is the principal subject of this third Dialogue, taking up more than 380 pages of it, namely, down to page 685. The rest of the Dialogue contains some remarks upon some of the royal instructions to governours of provinces, and upon the nature and extent of Martial Law, and upon the grounds, or principles, upon which the kings of England, without the concurrence of the parliament, have delegated a certain degree of legislative authority to the governours, councils, and assemblies of the American provinces. These remarks extend from page 685 to page 776; after which there is a recapitulation of the whole plan of reconciliation set forth in the first and this third

Dialogue, which concludes the whole work. The numbers, set over the pages, are continued, from the second Dialogue, except in a few of the last pages of the second Dialogue and the first pages of this. This is owing to the hopes I had entertained of comprising the whole matter of the second and third Dialogue in one volume. But this I found impracticable, and therefore, when more than half this third Dialogue was printed off, and I found that the subject would still require a considerable number of additional pages to explain it in a proper manner, I resolved to divide it into two dialogues and two volumes, and to make the first dialogue end with the examination of the opinion delivered by Lord Mansfield in the judgement in the

the case of *Campbell* and *Hall*, and reserve the remaining part of the subject for a third dialogue, to be published in a separate volume; which I now present to the Publick.

This is a general account of the design and contents of this third Dialogue. But, that the reader may know beforehand in a more particular manner the nature of the information, or entertainment, which he may expect from this volume, I will now proceed to state the contents of it more fully and distinctly, as follows.

In pages 404, &c.---408, an account is given of the sentiments of the greater part of the inhabitants of many of the provinces of North-America

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America with respect to the government of the Church by bishops, and of the manner in which the members of the Episcopal Church of England in the several provinces of America have been hitherto governed as to spiritual matters by commissaries appointed by the bishop of London.

Pages 409, --- 415, contain the king's instructions to the governour of Georgia concerning religion and church-government.

Pages 416, 417, 418, contain an account of the complaints made by some members of the Church of England in America of the want of a bishop established and resident amongst them, with the reasons alleged by them in favour of such an establishment.

Pages

Pages 419, 420 contain a remark on the said measure, shewing in what case it ought to be adopted.

In pages 421, 422, 423, it is observed that in the present state of things in America it would be the height of imprudence to adopt it.

Pages 424,---428, contain an account of the conduct of several Episcopal clergymen who have gone over from England to North-America, and more especially of those who have gone as *missionaries of the English Society for propagating the Gospel in foreign parts*, in propagating their opinions concerning Episcopacy and the Church of England amongst the Americans of other Protestant persuasions; and of the ill consequences
that

that have been produced by their said conduct.

Pages 429,---443 contain extracts from Dr. Douglas's Summary of the British Settlements in North-America in proof of the preceding account of the conduct of the said missionaries,

Pages 444, 445, 446, contain remarks on the nature of religious toleration, and a commendation of the spirit of toleration that has appeared of late years in the provinces of Massachusetts Bay and Connecticut, where the Church of England has not only been legally tolerated, but has even been established by acts of the assemblies of those provinces, as much as the Independant, or Congregationalist, mode of worship itself, which

is

is the more general religious persuasion in that country.

Pages 447, &c.---456 contain an account of the very imperfect toleration of Protestant dissenters in England, and of the rejection which two bills, (which had been brought into the House of Commons a few years ago for making it more compleat, and which, after some opposition, had been passed in that house,) met with in the House of Lords in England by the opposition of the bishops:--though now, at the time of writing this Preface, May 19, 1779, there is reason to hope that a third bill, that has been brought into parliament for the same good purpose, will, at last, pass into a law.

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Pages 457, ---461 contain some extracts from Mr. William Smith's History of New-York, concerning the conduct which the above-mentioned missionaries (from the English Society for propagating the Gospel in foreign parts,) have pursued in America, and particularly in the province of New-York; and an account of the sentiments of the majority of the people in that province on the subject of religious establishments and toleration.

Pages 462, 463, contain a remark on the conduct of the Episcopal clergy in New-England and New-York, and on the just grounds of uneasiness and apprehension it has afforded to the other Protestants in those parts of North-America.

Pages

Pages 464, &c.—470 contain an account of the steps that have been taken, and the arguments that have been used, to induce the government of England to establish bishops in America. One of these has been to represent the Presbyterians as enemies to kingly government: which is shewn to be an ill-grounded charge against them.

Pages 471,—484 contain an account of *five* different states in which a particular religion may subsist in a country; to wit, A state of *Persecution*, A state of *Connivance*, A state of *Legal Toleration*, A state of *Endowment*, and a state of *Establishment*: with examples of each of these states.

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Pages 485, 486, contain a remark on the possibility of two, or more, religions being established in the same country at the same time; with an example of such co-establishment in the provinces of Massachusetts Bay and Connecticut.

Pages 487, 488, 489, contain a distinction of the methods in which a religion may be treated in a country into *seven* different classes, or states; to wit, A state of *Persecution*;---A state of *Toleration by Connivance only*;---A state of *Legal Toleration, but accompanied with an obligation to pay tythes, or the other usual contributions, to the maintenance of the established religion of the country*;---A state of *legal Toleration, without any obligation to contribute to the maintenance of any other religion*;---

*gion;---A state of Endowment;---
A state of Co-establishment, in common
with some other religion;---and A state
of Sole Establishment.*

Page 490 contains an account of the argument that has been used by some members of the Church of England to prove that their religion cannot even be tolerated in North-America without establishing a bishop there.

Pages 491, 492, contain a remark on the said argument, shewing that it cannot justly be said, "that a toleration of the Church of England is refused to the members of that church in America," until some law is passed to prohibit the bishops of England and Ireland from going to America,
and

and exercising their episcopal functions there: and that no such law has yet been passed.

In pages 493, &c.---498 it is observed that such an Episcopal visitation of America by the bishops of England and Ireland would probably have a very good effect.

In pages 499, 500 it is observed that every act of authority done in favour of any particular religion is, in some degree, *an establishment* of it.

Pages 501, &c.---516, contain an account of the establishment of the Church of England in the province of New-York, in a certain imperfect degree, by acts of the assemblies of that province during the government
of

of colonel Benjamin Fletcher, (who was governour of that province under king William from the year 1692 to the year 1698,) and of Lord Cornbury (the grandson of the Lord Chancellor Clarendon) who was governour of the same province under queen Anne from the year 1702 to the year 1708.

Page 517 contains a remark on the ill effects of the above-mentioned proceedings of governour Fletcher and Lord Cornbury in favour of the Church of England.

Page 518 mentions an opinion that has been maintained by several Episcopalians in the province of New York, "That the Church of England was legally established in the said province,

vince, and in other provinces of North-America, *independently of the said acts of assembly* passed in its favour under the governments of Colonel Fletcher and Lord Cornbury."

Pages 519, &c.---593, contain an account of the arguments alledged by the said Episcopalians in support of the said opinion, together with a discussion of each of the said arguments. These arguments are four in number.---The first and principal of them (which is grounded on the supposed introduction of *all* the laws of England into America, upon the settling of it,) is stated in page 520, and examined in the following pages, down to page 539.---The second argument (which is drawn from the treaty of Union of the two kingdoms

of

of England and Scotland, in the year 1707,) is stated in pages 539, &c.---543, and is examined in the following pages, down to page 555.---The third, (which is grounded on the king's private instructions to his governours under his signet and sign-manual, and on his supposed authority as supreme head of the Church of England,) is stated in pages 555, 556, 557, and is examined in the following pages down to page 568.---And the fourth and last, (which is grounded on a supposition that the statute of Uniformity passed in the 14th year of the reign of king Charles the 2d, and the several penal statutes passed in the same reign, against Protestant Dissenters, extend to the American colonies,) is stated in page 569, and remarked upon in the same

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page

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page and in page 570. These remarks are followed by an account (taken from Mr. Smith's History of New-York) of the prosecution of the Rev. Mr. Francis MacKemie, a Presbyterian minister, in the province of New-York, in the year 1707, under the government, and by the direction, of Lord Cornbury; in the course of which prosecution the said third and fourth arguments of the Episcopalians were made use of. This account extends from page 571 to page 582. The following pages from page 582 to page 592 contain some remarks on the aforesaid prosecution of Mr. MacKemie, and an account of some other acts of oppression of the said Lord Cornbury against the Presbyterians in the province of New-York; which, together with some other gross mal-

malversations in his office of governor of that province, occasioned Queen Anne to remove him from that government.

Pages 593, &c. -- 610 contain an inquiry into the nature of the ecclesiastical supremacy of the kings of England, or the power belonging to their bishops supreme heads of the Church of England.

Pages 611, &c. -- 618 contain a recapitulation of the arguments that have been used by the Episcopalians in America in support of their project of establishing bishops in America.

Pages 619, &c. -- 630 contain an account of the effect which the afore-

laid

XVIII PREFACE.

THE arguments of the Episcopalians in America have had on persons of weight and authority in England, so as to excite in the minds of the Non-Episcopalians of America an apprehension that the said project of establishing bishops amongst them was likely to be adopted by the British government.

In pages 631, &c.---641 is a long note containing some remarks on some passages in a sermon preached by *Dr. Markham*, archbishop of York, before the Society for propagating the Gospel in foreign parts on the 22^d day of February, 1777, in which his Grace set forth the system of government which, he thought, it would be right for Great-Britain to adopt with respect to America, in case it had been

been then reduced, by the army under the command of Sir William Howe, to a state of perfect obedience and submission: one part of which system is, *to establish bishops in America, and likewise taxes, or some other legal and general contribution, for the maintenance of the clergy of the Church of England.* The passages in which this system is contained are recited word for word in the said note; and the propositions, of which the system is composed, are afterwards drawn out and expressed more fully and distinctly than in the passages themselves, which are worded with some caution and reserve: and then some remarks are made on the ill consequences that would probably have followed from the measures recommended by the arch-bishop, if America

P R E F A C E.

the had been reduced to obedience,
and those measures had been adopted
by the government of Great Britain,
in America, in regard to the

In the text of pages 631, &c.--641,
a general conclusion is drawn, from
all that has been before said upon this
subject of Episcopacy, in this Dia-
logue, from page 404 to page 630,
in favour of the measure above re-
commended, of passing an act of the
British parliament to promise and assure
the Americans that neither the king nor
the parliament of Great Britain will
ever establish a bishop in any of the
provinces of America, or impose taxes,
or any other payment, or contribution,
upon the inhabitants of any of the said
provinces for the maintenance of the
clergy of the Church of England, with-
out the consent and concurrence of the
assembly

assembly of such province. And herewith ends the long discussion on the state of the church, and the establishment of bishops, in America.

Pages 642, 643 are employed in stating the next article of the Plan of Reconciliation between Great-Britain and her American colonies which is meant to be here recommended; to wit, the amendment of the constitution of the legislative councils of the several royal governments in America, for provinces which are governed by the king's commissions only, without a charter, by increasing the number of members in every such council from 12 to, at least, 24 members, and making the said members totally unremovable and unfuspendible by the governors of those provinces respectively,

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respectively, and removeable by the king himself *only* by his order, in council.

Pages 644, 645, &c.—662 contain a copy of such of the king's instructions to the governour of Georgia as relate to the council of the province. These instructions are necessary to convey to the reader a just idea of *the present constitution* of the provincial councils in the royal governments of America; from whence the necessity of amending them in the manner proposed may be inferred.

Pages 663,---666 contain some conclusions and remarks, drawn from the foregoing instructions, concerning the nature and constitution of the said provincial councils.

Pages

Pages 667—672 contain the proposed amendment of their constitution, with the reasons of it,

Pages 673, &c.—683 contain a view of the inconveniences resulting from the present constitution of the said councils, together with two extracts from a pamphlet said to be written by Sir Egerton Leigh, baronet, who, about six years ago, was his Majesty's attorney-general for the province of South-Carolina, and an extract from a letter of Mr. Andrew Oliver, (who was some time since secretary, and afterwards lieutenant-governour, of the province of the Massachusetts Bay in North-America,) to the late Mr. Thomas Whateley, wherein those gentlemen (who were so well acquainted with the state of

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North-America,) recommend the aforefaid amendment of the constitution of the faid provincial councils as a measure of very great importance to the peace and good government of America.

Page 684 contains a conclusion drawn from the foregoing reasons and authorities in favour of the proposed amendment of the constitution of the faid councils.

Pages 685, 686 contain a remark on two of the king's instructions to the governour of Georgia, to wit, the 38th and the 90th, which seem, at first fight, to delegate a degree of legislative power to the governour and council of the province only, without the concurrence of an assembly ;

bly; the first of them injoining the governour to take the advice and consent of the council in establishing tables of the fees to be taken by the several officers of government in the said province, and the second injoining him to take their advice and consent in establishing articles of war, or other law-martial, in the same.

Pages 687, &c.---699 contain an inquiry into the nature of the power mentioned in the said 38th instruction, of establishing a table of fees to be taken by the officers of government in the said province; in which it is shewn that the establishment of such fees is in truth an act both of legislation and taxation, and therefore ought to be done by the governour, council, and assembly of the province

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conjointly, and not by the governour and council alone; and it is further shewn that acts of assembly have accordingly been passed for that purpose in the provinces of Virginia and South Carolina.

In pages 700, &c.----704 it is shewn that the 90th instruction to the governour of Georgia, concerning the establishment of martial law, is not intended to convey to him a power of establishing martial law in the said province, but to regulate and restrain him in the exercise of the power of doing so which was already granted to him alone in his commission under the great seal of Great-Britain, by requiring him to act, in the exercise of the said power, with the advice and consent of the council of the said province:

provinces: in proof of which the clauses in the commissions of the governours of Quebeck and New-York which relate to the levying the militia and establishing of martial law in the said provinces, (to which it is probable there was a similar clause in the commission of the governour of Georgia,) are recited at full length.

31 In pages 705, 706, 707, it is observed that it would have been better to insert the foregoing restriction on the governour's power, with respect to the establishment of martial law in the said province, in the commission itself; and that, in general, it would be right to insert in the commissions of governours of provinces under the great seal almost all those restrictions and directions which have hitherto been

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been the subject of the king's instructions to them under his signet and sign-manual, and more especially all those parts of the said instructions which are intended to convey to them any new powers not contained in their commissions.

Pages 708, &c.—765, contain reflections on the nature and extent of martial law, and on the occasions (if there are any such,) on which it may lawfully be established by the authority of the king alone in Great-Britain, without the concurrence of the parliament, or of the governours alone, or the governours and councils alone, in the American provinces, without the concurrence of the assemblies of the said province or an act of the British parliament. This
is

P R E F A C E. xxxix

is a curious and important subject, and well worth the reader's most attentive consideration.

In the course of these reflections it is observed that the usual clause in the commissions of governours of provinces under the great seal of Great-Britain does not express with sufficient accuracy the occasions on which alone it is lawful to establish martial law, and the restrictions to which it is liable: and therefore a new draught of the said clause is proposed in pages 760, 761, 762, in which, it is presumed, these restrictions are distinctly set forth, so as to leave no room for doubt or uneasiness upon the subject.

Of

Of the said reflections on martial law, which extend from page 708 to page 765, the former twenty pages, to wit, from page 708 to page 728, relate to the exercise of martial law in England, and the remaining 37 pages, from page 728 to page 765, relate to the exercise of it in the provinces of America.

In pages 766, 767, 768, a difficulty is stated concerning the king's right of delegating a legislative authority to the governours, councils and assemblies of the American colonies. And in pages 768, 769, 770, 771, a solution is given of this difficulty, by exhibiting a short view of the king's prerogative of creating, or erecting, corporations, or political bodies.

P R E F A C E. xli

bodies in the state, subordinate to the grand community of which he is the head, which consists of all the subjects of the Crown, in whatever parts of the dominions thereof they may reside: and it is observed that the king may lawfully communicate to such corporations a certain limited degree of legislative authority, namely, an authority to make laws for their own convenience and good government, *that are not repugnant to the general laws of the kingdom.* And in pages 771, 772, &c.--778, the said doctrine concerning corporations, or inferiour political communities, is extended to the American colonies; and it is observed that it would have been a happy circumstance for the peace and welfare of those colonies, and for the un-

f disturbed

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disturbed continuance of their connection with, and dependance upon, Great-Britain, if the political constitutions of the American colonies had, all of them, been settled at first by act of parliament.

The rest of the book, from page 776 to the end, consists of a recapitulation of the several articles of the Plan of Reconciliation between Great-Britain and her American colonies that has been explained and recommended in the course of this and the former Dialogues.

THE

THE
Canadian Freeholder.

DIALOGUE III.

FRENCHMAN.

Introduction
to this third
Dialogue.

I MUST now desire you to communicate to me the remaining part of your Plan of Reconciliation between Great-Britain and her English colonies on this continent, with the reasons upon which you found the several measures you wish to see adopted for that purpose. Two of these measures you just touched upon in our two former conversations; which were, "*the removing from the minds of the Americans the apprehensions of having bishops established amongst them by the authority of the king, or parliament, of Great-Britain, without the consent of their own assemblies,*"

semblies," and "the amendment of the constitutions of the provincial councils in the several royal governments of America, (which are governed only by the king's commissions, without a charter,) by increasing to, at least twice their present number, the members of such councils, and by appointing them to hold their seats in the said councils during their lives or good behaviour, instead of holding them at the mere pleasure of the Crown." And I remember I observed to you, upon our last mention of these measures, that I thought the tendency of them to please and gratify the Americans, and thereby to promote the good end of a reconciliation, was too evident to need a proof; but I added, that I was persuaded that, besides this general tendency of them, you had some particular reasons arising from your knowledge of the sentiments of the Americans upon these subjects, that made you consider these measures as of so much importance: and you confessed that you had such reasons, and promised to explain them to me at our next meeting in the fullest and best manner you were able: and you likewise said you might also, perhaps suggest

suggest another measure or two, (besides the two before mentioned) that would be useful towards this important end of restoring peace and confidence between Great-Britain and her American colonies. I now hope, as we have sufficient time before us, that you will fulfill your promise, and gratify my curiosity upon these points, by explaining your notions and opinions concerning them in the same full and ample manner in which you have communicated your sentiments on the other subjects which we have discussed in our two former conversations.

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ENGLISHMAN.

I remember my promise, and will endeavour to perform it, unless you shall yourself propose to absolve me from it in consequence of the tediousness of some of the discussions it will be necessary to go into, in order to a compleat discharge of it. For I much fear that, patient as you have been hitherto in hearing the long accounts from Matthew Paris of the feudal subjection of Wales to the kings of England before the final reduction of it by Edward the 1st, and the minute state
of



of the case of the *Post-nati* in the reign of king James the 1st, and other tire some particulars in our last conversation,) you will hardly be able to bear up against the length and tire some ness of the accounts both of facts and arguments which I shall be obliged to lay before you concerning the state of religion in America, and the endeavours which have been made at sundry times by the partisans of Episcopacy in these provinces to obtrude their mode of church government and divine worship upon those of a different persuasion.

FRENCHMAN.

I have a greater stock of patience than you think for: and defy you to wear it out by the most ample discussions you can enter into concerning the state of these provinces of America with respect to any branch of their government, whether civil or religious. And I therefore desire you would begin your explanation of the reasons upon which you found the remaining parts of your plan of reconciliation, and more especially your first measure, "of removing from the minds of the Americans the apprehensions of having bishops

bishops established amongst them by either royal or parliamentary authority, and without the consent of their own assemblies;” the discussion of which you represent as so formidably long and tedious.

ENGLISHMAN.

I am glad to find, you are so much in heart, and hope you will continue so. And, since you persist in desiring it, I will enter, without further delay, upon the explanation of this subject.

The grounds upon which I conceive the measure you have just now mentioned, “of removing from the minds of the Americans the apprehension of having bishops established amongst them by the authority of the king or parliament of Great-Britain, and without the consent of their own assemblies,” to be so necessary to a reconciliation between those colonies and Great-Britain, are as follows.

The people of several of the English colonies in North-America are dissenters from the Episcopal Church of England, and are either Presbyterians, or Independents, or Quakers,

Of the necessity of removing from the minds of the Americans the apprehension of having bishops established amongst them.

There are great numbers of non episcopalians in many of the provinces of North-America.

Of the first
settlement of
the New-Eng-
land provin-
ces.

Quakers, or followers of some other sect, or mode, of the Protestant religion that is adverse to Episcopal government. This is more especially the case with the four provinces of New-England, to wit, Connecticut, Rhode-Island, Massachusetts Bay, and New-Hampshire. The Englishmen who first settled these countries, went thither about the year 1630, during the tyrannical part of the reign of king Charles the 1st, on purpose to avoid the severities they were then exposed to from the bishops of England, though Protestants, and with a view to follow and establish their own mode of worshipping the Supreme Being, which they conceived to be *purer* (as they expressed it,) and more agreeable to the simplicity of the Gospel and the practice of the primitive Christians, than that which was adopted by the Church of England. For the liberty of worshipping God in their own manner could not at that time be enjoyed by them in England; the mode of worship adopted by the Church of England being then prescribed and enforced with a high hand upon all the subjects of the Crown, without any allowance of any other,

other, even to Protestant dissenters. From this original dislike to bishops in the first settlers of these provinces, arising from the hard treatment they had suffered from them, it is easy to conceive that their descendants may have retained a strong prejudice against that order of clergymen, and a dread of falling under their authority. And this has really been the case, and in a very high degree; inasmuch that nothing can be more alarming to this part of the king's American subjects than the idea of falling back (to use their own expressions,) under that Egyptian bondage, and that yoke of spiritual tyranny, from which their ancestors, with so much difficulty, spirit, and perseverance, had made themselves free; though with respect to all civil matters they greatly reverence and esteem the constitution of the English government. These being the sentiments that prevail amongst them, one would have thought that common prudence should have induced the inhabitants of Great-Britain never to touch upon the string of Episcopacy with them, for fear of exciting those notes of discord which it had formerly produced among their ances-

tors before they went from England to America, and which it was next to certain it would produce again amongst them as soon as it should be put in motion. And it must be confessed, in justice to the various sets of ministers of state that have directed the government of England for more than a century after the restoration of monarchical government in the year 1660, and more especially since the happy revolution in 1688, I say, it must be confessed that few or no attempts have been made by the government of England to thwart the sentiments of the Americans upon this subject by endeavouring to establish bishops among them; but the kings and queens of England have been contented to leave the settlement of the affairs of religion in the American provinces to their respective legislatures, reserving only to themselves and their governors the same power of allowing or disallowing the acts of the American assemblies made relating to it as they exercised with respect to the acts made by the same legislatures concerning any other subjects. All that has been done by the mere authority of the Crown,

The crown of Great-Britain has never yet attempted to establish bishops in America.

Crown, for the accommodation of the Episcopals of North-America, has been to authorize the bishop of London for the time being, to exercise episcopal jurisdiction in those provinces by commissaries to be appointed by him for that purpose, and who have been accordingly so appointed. And this, I believe, has given no umbrage to the Non-episcopals in those provinces.

But the episcopal clergy of America have hitherto been put under the spiritual jurisdiction of the bishop of London, who has delegated his authority to certain clergymen in the several provinces, under the title of his *commissaries*.

This authority was delegated by the Crown to the bishop of London at one time by a commission under the great seal of Great-Britain, as I have been credibly informed. This was about thirty, or five and thirty, or, perhaps, more, years ago, in the time of either bishop Gibson or bishop Sherlock, I forget which! but they, both of them, were men of learning in the laws and history of England, as well as in the studies more peculiarly belonging to their profession, and were therefore likely to be desirous of acting in this business under a legal and regular authority, which (as we have already observed, in the former part of this conversation, concerning the

The spiritual authority over America was delegated by the Crown to the bishop of London in the late reign of George the 2d by a commission under the great seal of Great Britain.

But both before and since that time it has been exercised by the bishops of London by virtue of the king's instructions to his governours of provinces under his signet and sign-manual.

Instructions to the governour of Georgia concerning religion and church-government.

the delegation of all sorts of powers of government) could only be conferred on them by an instrument under the great seal. But, both before and since that time, this spiritual authority over the Episcopalians of America has been exercised by the bishops of London by virtue of only the private instructions of the king to his governours of provinces under his signet and sign-manual. The instructions relating to this subject are, as I believe, nearly the same for all the colonies, or, at least, for those colonies in which the Episcopal Church, or Church of England, is the prevailing mode of religion; as is the case in Virginia, Maryland, South-Carolina, and Georgia; in the three first of which colonies, as I have been informed, it is established by acts of assembly, with a legal provision for the maintenance of its ministers; and in the last, if it is not completely established, it, at least, has the countenance of the government, and prevails much more than any other mode of worship. Now in this last colony of Georgia the royal instructions to the governour concerning religion and church-government are as follows.

I N S T R U C -

INSTRUCTION 75.

You are to permit a liberty of conscience to all persons, except papists; so they be contented with a quiet and peaceable enjoyment of the same, not giving offence or scandal to the government.

Liberty of conscience to all persons, except papists.

INSTRUCTION 76.

You shall take especial care that God Almighty be devoutly and duly served throughout our government; the book of Common-prayer, as by law established, read each Sunday and holyday; and the blessed sacrament administered according to the rites of the Church of England.

Divine service to be performed according to the rites of the Church of England.

INSTRUCTION 77.

You shall be careful that the churches already built there be well and orderly kept; and that more be built, as the colony shall, by God's blessing, be improved; and that, besides a competent maintenance to be assigned to the minister of each orthodox church, a convenient house be built at the common charge for each minister, and a competent proportion of land assigned him for a glebe and exercise of his industry.

Of the building and repairing of churches.

Maintenance for the minister.

Parsonage-house.

Glebe land.

INSTRUCTION 78.

No minister to be preferred to a benefice without a certificate of his orthodoxy and good behaviour from the bishop of London.

You are not to prefer any minister to any ecclesiastical benefice in that our colony without a certificate from the Right Reverend Father in God, the Lord Bishop of London, of his being conformable to the doctrine and discipline of the Church of England, and of a good life and conversation. And, if any person already preferred to a benefice shall appear to you to give scandal either by his doctrine or manners, you are to use the proper and usual means for the removal of him.

INSTRUCTION 79.

Every minister shall be a member of the vestry of his parish.

You are to give orders forthwith, (if the same be not already done,) that every orthodox minister within your government be one of the vestry in his respective parish; and that no vestry be held without him, except in case of sickness, or that, after notice of a vestry summoned, he omit to come.

INSTRUC-

INSTRUCTION 80.

You are to inquire whether there be any minister within your government who preaches and administers the sacrament in any orthodox church, or chapel, without being in due orders; and to give an account thereof to the said Lord Bishop of London.

Of ministers officiating in orthodox churches without being in due orders.

INSTRUCTION 81.

And, to the end that the ecclesiastical jurisdiction of the said Lord Bishop of London may take place in that colony, so far as conveniently may be; We do think fit that you do give all countenance and encouragement to the exercise of the same: Excepting only the collating to benefices, granting licences of marriages, and probates of wills; which we have reserved to you, our governor, and to the commander in chief of our said colony for the time being.

Bp. of London's jurisdiction to be supported.

INSTRUCTION 82.

We do further direct that no schoolmaster be henceforth permitted to come from England and keep school in the said colony, without the licence of the said bishop of London; and that

Licensing school-masters.

no other person now there, or that shall come from other parts, shall be permitted to keep school in that our said colony of Georgia without your licence first obtained.

INSTRUCTION 83.

What degrees of affinity shall make marriages unlawful.

And you are to take especial care that a table of the marriages established by the canons of the Church of England be hung up in every orthodox church, and duly observed. And you are to endeavour to get a law passed in the assembly of that colony, (if not already done,) for the strict observation of the said table.

INSTRUCTION 84.

Blasphemy and immorality to be punished.

The Right Reverend Father in God, Edmund, late lord bishop of London, having presented a petition to his late Majesty, our royal father, humbly beseeching him to send instructions to the governours of all the several plantations in America, that they cause all laws already made against Blasphemy, Prophaneness, Adultery, Fornication, Polygamy, Incest, Prophanation of the Lord's day, Swearing, and Drunkenness, in their respective governments,

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to be vigorously executed;—And We thinking it highly just that all persons who shall offend in any of the particulars aforesaid should be prosecuted and punished for their said offences; —It is therefore our will and pleasure that you take due care for the punishment of the afore-mentioned vices, and that you earnestly recommend it to the assembly of Georgia to provide effectual laws for the restraint and punishment of all such of the afore-mentioned vices against which no laws are as yet provided. And also you are to use your endeavours to render the laws in being more effectual, by providing for the punishment of the afore-mentioned vices by presentment upon oath to be made to the temporal courts by the church-wardens of the several parishes at proper times of the year, to be appointed for that purpose. And, for the further discouragement of vice, and encouragement of virtue and good living, that by such example the Infidels may be invited and desire to embrace the Christian religion, you are not to admit any person to publick trusts, or employments, in the colony under your government, whose ill fame and conversation may occasion scandal.—And it is our further will and
 pleasure

pleasure that you recommend to the assembly to enter upon proper methods for the erecting and maintaining of schools, in order to the training up of youth to reading and to a necessary knowledge of the principles of religion.

INSTRUCTION 85.

The conversion of Negroes and Indians.

You are, with the assistance of the council and assembly, to find out the best means to facilitate and encourage the conversion of Negroes and Indians to the Christian religion: More especially you are to use your endeavours with the assembly, that they make provision for the maintenance of some ministers to inhabit amongst the Indians, in order to instruct them, as also to prevent their being seduced from their allegiance to Us by French priests and Jesuits.

INSTRUCTION 86.

The numbers of the inhabitants and of the births and burials to be transmitted to England.

*You shall send to our commissioners for trade and plantations by the first conveyance, in order to be laid before Us, an account of the present number of planters and inhabitants, men, women, and children, as well masters as servants, free and unfree; and of the
slaves*

slaves in our said colony: As also a yearly account of the increase or decrease of them, and how many of them are fit to bear arms in the militia of our said colony,——You shall cause an exact account to be kept of all persons born, christened, and buried: and you shall yearly send fair abstracts thereof to our commissioners for trade and plantations, as aforesaid.

INSTRUCTION 87.

And we do further expressly command and require you to give unto our commissioners for trade and plantations, once in every year, the best account you can procure of what number of negroes the said colony is supplied with.

The number of negroes in the colony shall be transmitted every year to the commissioners of trade and plantations.

These are all the instructions to the governour of the colony of Georgia that have any relation to religion or church-government. And by these, you see, the governour is commanded to support the spiritual jurisdiction of the bishop of London in the said colony, under certain restrictions or limitations, and without molesting the Protestant dissenters

dissenters from the Church of England, to whom they are enjoined by the 75th instruction to allow a liberty of conscience. And this jurisdiction of the bishop of London has, in pursuance of these, and the like, instructions, been exercised in divers of the colonies of North-America by clergymen of the Church of England, to whom the bishops of London have delegated it, or some part of it, under the title of their *commissaries*. And this, as I before observed, has given little, or no, umbrage to the Non-episcopalians of North-America.

The jurisdiction of the bishop of London has been exercised in America by *commissaries* appointed by the said bishop.

Yet some Church-of-England-men in America have, at times, been anxious to have a bishop established and resident among them.

But it has, more than once, unfortunately happened that some of the members of the Church of England in these colonies have not been satisfied with this delegated exertion of episcopal authority over them by the bishop of London's commissaries, but have been desirous to have a bishop established and resident among them, and have even shewn great uneasiness at the want of one. They have complained, on these occasions, that it was a great misfortune to them to go without what they styled the important benefit of
episcopal

episcopal confirmation, and that it was a cruel hardship upon their ministers to be obliged to cross the Atlantick ocean and go to England for the purpose of receiving holy orders from the English bishops, by which some of them have died, either in their passage to England by the fatigues and dangers of the sea, or of the small-pox after their arrival there, and others have been put to more expence than their slender fortunes could conveniently bear: and for these and, perhaps, other such reasons, they have earnestly solicited the establishment of a bishop in America. These complaints have generally taken their rise from the suggestions of a few zealous clergymen of the Church of England settled in America, who probably wished to increase their own consequence in this country by obtaining so splendid a support to their party, which would seem to raise it above all the other religious parties, and be the means of exalting it's members, or, at least, it's ministers, to offices of dignity and power. And sometimes we may suppose these reverend gentlemen might flatter themselves with the hope that they themselves might be

The reasons alledged by them in favour of such a measure.

These complaints have taken their rise from some clergymen of the Church of England.

the happy persons whom the Crown would pitch upon to fill this new and lofty station. But, whatever might be their motives to it, it is certain that these complaints about the want of a bishop in America have been principally set on foot by some clergymen of the Church of England residing in it, and have been propagated by them amongst the Laity of the same communion, who have sometimes been persuaded to join with them in complaining of this hardship. And what is most remarkable is, that these very zealous clergymen, who have found out this grievance for the Americans of the episcopal communion, have been, for the most part, natives of England, and not of America; though, by their zeal for the spiritual welfare of the inhabitants of the latter country, one would be inclined to suppose they must have been born there. For, as to the principal clergymen of the Church of England in America, who have been born and bred in America, (and who therefore seem to have the best right to judge of what is fit to be done in this matter for their own accommodation, and that of their several congregations;)

And these clergymen have generally been natives of Old England, and not of America.

tions;) I have been well assured that they are in general very well contented with the present state of the Church of England in America, and with the exercise of the episcopal authority there by the bishop of London's commissaries in the manner I have already mentioned: and this is more particularly true of the American clergy in the provinces of Virginia and Maryland and South Carolina, in which the Church of England is legally established by acts of their respective legislatures, and in which the number of dissenters from the Church of England is greatly less than in the other colonies.

FRENCHMAN.

This seems rather strange: since, if any people have a right to complain of the want of a bishop, and to be earnest with the British government to send them one, it seems naturally to belong to those colonies in which the majority of the people are members of the episcopal church; and more especially to the clergy of those colonies; because they are the persons upon whom

The episcopal clergy born in America seem to have the best pretence for complaining of the want of a resident bishop.

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most of the hardships that may arise from want of a resident bishop, must be supposed to fall. If the people of these colonies are contented to be without bishops, it seems absurd and impertinent, and, I might almost say, seditious, in the episcopal clergy of the other provinces, (in which the dissenters from the Church of England are more numerous than the churchmen,) to use any endeavours to procure the establishment of a bishop in those provinces. But, if it should ever happen that the body of the people, in either of the above-mentioned colonies of Virginia, Maryland, and South Carolina, (in which the Church of England is established,) should earnestly desire to have a bishop established amongst them, and should testify that desire in a regular and constitutional manner, by a petition of their assembly to the king to establish one amongst them, I must needs say that I think their request ought, in such a case, to be complied with.

In what case it would be just and prudent to establish a resident bishop in America.

E N G-

ENGLISHMAN.

That is precisely my opinion upon the subject. A bishop ought, in such a case, to be established in the province whose assembly should have petitioned for it; but not before. But this the American assemblies are far enough from being disposed to do. For, on the contrary, the assembly of the province of Virginia not long since, as I am well assured, returned thanks to an episcopal clergyman of the name of *Henley*, for having refused to join with some of his clerical brethren in petitioning for the establishment of a bishop, as having by the said refusal rendered a good service to the province by preventing the farther prosecution of a measure which they thought would have a pernicious tendency. Nor do I believe that any considerable number of the clergy of Virginia were disposed to the measure, though some of them certainly were so. But of this I cannot speak with certainty, as I have never heard what were the particular numbers of the persons that espoused the different sides of that question.

This case does
not seem likely
to happen.

FRENCH-

FRENCHMAN.

It would be height of imprudence at least, if not of injustice, in the present state of things, for Great-Britain to establish bishops in America.

After such a publick mark of their disapprobation of the establishment of a bishop in America, as you have just now mentioned to have been given by the assembly of Virginia, it would seem to be the height of folly at least, if not of tyranny, for the British government to attempt such a measure in that province. And even, if they had not given such a testimony of their aversion to the measure, I should think it would have been a most imprudent thing in the English ministry to intermeddle in a business of that delicate nature before they were well assured it would be agreeable to the people there. For nothing is more apt to create uneasiness amongst a people, than meddling with their religion without their consent, even though it be to support and encourage it: of which the English ministry have now a remarkable instance before their eyes in the case of us Canadians. For, though we are much attached to the Roman-Catholick religion, and should have been extremely uneasy if we had been restrained from the free exercise of it,

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we have been almost as much offended by the officious zeal shewn by the British parliament for the support of it, by that clause in the late unhappy Quebec-Act, which revives our legal obligation to pay our priests their tythes. So tender are men's feelings upon the subject of religion !

But, as to the other provinces of North America, in which the majority of the people are dissenters from the Church of England ; and, more especially, the provinces of New-England, in which the people have (as you tell me) an hereditary aversion to the government of bishops, arising from the memory of the hardships which their ancestors formerly suffered from it ; it seems to be so very absurd, impolitick, and oppressive for the government of Great-Britain to establish episcopacy in those provinces, that I can hardly believe the thought of doing so has ever been seriously entertained by any statesman, or person of any weight, or authority, in Great-Britain. I therefore beg you would inform me what has been said or done in Great-Britain that could give occasion

sion to any apprehension of a design of this kind in the minds of the Non-episcopalians of America.

ENGLISHMAN.

An account of the episcopal clergymen who have gone over from England to America, and excited the complaints concerning the want of a bishop in that country.

I have already told you that the complaints concerning the want of a bishop in America have generally taken their rise from some clergymen of the Church of England, who have been born and bred in England, and, not meeting with preferment in their native country, have gone over to North-America to exercise their profession in that country. These clergymen have been of two sorts; either such as have been invited to officiate there as ministers of particular congregations of the communion of the Church of England, or such as have gone thither as missionaries from a certain society in England, called *The society for propagating the gospel in foreign parts*, for the purpose (as has been pretended) of converting the Indians of this continent from heathenism to the Christian and Protestant religion. But, though the clergymen of the latter class have been sent to America under pretence of furthering that
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pious and useful work, they have usually employed their time and talents in a manner that had not the smallest relation to it, and to purposes that have rather had a mischievous than a beneficial tendency to the peace and happiness of these provinces. For, instead of going amongst the Indians, and residing in their villages, and learning their languages, and endeavouring to instruct them in the truths of the Christian religion, they have generally settled themselves in some of the most populous towns and districts of the cultivated parts of those provinces, which are inhabited only by Englishmen, or people who speak the English language, and have there employed themselves in converting Christians and Protestants from one mode of christianity to another, that is, from the opinions entertained by the Presbyterians, and Independents, and Anabaptists, and other dissenters from the Church of England, to the doctrines and discipline of that church: which I must needs consider as doing mischief instead of good in those provinces, inasmuch as it has tended to raise uneasinesses and dissensions amongst the inhabitants of them, and make them dissatis-

Of the conduct of the missionaries sent to North-America by the English society for propagating the gospel.

Ill consequences of the said conduct.

fied with the modes of divine worship to which they had been accustomed from their youth, and in the practice of which they had lived virtuously and peaceably and in charity one with another ; and this without any advantage to either their spiritual or temporal welfare. For the members of the Church of England do not hold, (as you Roman Catholicks do,) “ that all persons who are not of their own church, are objects of the divine wrath, and will be eternally miserable in the next world,” but acknowledge that all sincere Christians, at least, if not all men whatever, who act virtuously, and agreeably to the dictates of their own consciences and the means of information and instruction that have been afforded them, will (notwithstanding their erroneous opinions with respect to the doctrines of religion,) find mercy from God Almighty in a future life, through the merits of our Saviour Jesus Christ, who died for the salvation of all the world. This being the opinion entertained by the members of the Church of England, those busy episcopal missionaries who, instead of endeavouring to convert the Indians to Christianity, have employed themselves

selves in labouring to draw away virtuous and sincere Presbyterians and Independents in New-England or New-York from the mode of divine worship which they had received from their forefathers, and had been used to from their cradles, to that of the Church of England, can never have imagined that they were doing their converts any service with respect to their eternal welfare in the next world, but must have been actuated by some motive of a merely temporal nature; which may have been, perhaps, to make their converts more attached to the interests of Great-Britain, and more willing to continue dependent upon it and obedient to its laws, than they otherwise would be, while they entertained such different notions with respect to church government from the generality of their fellow-subjects in Great-Britain. This zeal for the temporal and political interests of Great-Britain is the very best motive to which I can ascribe the conduct of these missionaries in thus endeavouring to make converts of sincere Christians of the Presbyterian or Independent persuasion, to the religion of the Church of England. But it seems much

more probable that they have, for the most part, been actuated by more interested motives, and have had a view to increase their own importance by aggrandizing the party to which they belonged ; and to procure themselves congregations, when they had none, or to increase them, when they had ; and, above all, to recommend themselves to the favour and patronage of the powerful bishops in England, by whom the business of the society for propagating the gospel in foreign parts was carried on, and by whose means they had been sent as missionaries to America. But, whatever might be the motives which induced them to be so diligent in their endeavours to make *this sort of proselytes*, I am confident that they have done a great deal more harm than good by it to the inhabitants of America, by exciting among them a spirit of discord and animosity and jealousy, from which they would otherwise have continued free. And they have also done a disservice to Great-Britain itself, by exciting amongst the non-episcopalians in America an apprehension that the British government would, one day or other, at the solicitation of these very zealous missionaries

missionaries and their converts, supported by the interests of the bishops that were their patrons in England, establish episcopacy among them ;—an apprehension which has a manifest tendency to weaken their attachment to the kingdom of Great-Britain and make them less disposed to continue in dependance on it.

But, that you may not suppose that I have spoken too hastily and without sufficient grounds, of the manner in which the English clergymen who have been sent into North-America as missionaries from the English society for propagating the gospel in foreign parts, have conducted themselves in these provinces, I beg leave to read to you a few material passages from Dr. William Douglas's historical and political summary of the first planting, progressive improvements, and present state of the British settlements in North-America, which will abundantly confirm all I have advanced upon this subject. This book was written in the year 1750, that is, two years after the peace of Aix la Chapelle, and five years before the commencement of hostilities in the late war, and consequently
many

Of Dr. Douglas's summary of the British settlements in N. America.

Extracts from the said book in support of what has been here advanced concerning the conduct of the English missionaries above-mentioned.

many years before the rise of the present unhappy disputes between Great-Britain and this continent, which did not begin till a year or two after the late peace in 1763: and it is generally allowed to be a very faithful and impartial account of the state of those provinces at that period. Now the author informs us in vol. 2, page 119, "*that the religion-missionaries neglect the conversion of the Indians, and take no farther care than with relation to their salaries or livings, and of being stationed in the most opulent towns, which have no more communication with the savage Indians than the city of London has.*"

And, in vol. 2, p. 126, after having given us a list of no less than 74 places in the *well-settled* parts of the provinces of Newfoundland, Massachusetts-bay, New Hampshire, Rhode-Island, Connecticut, New-York, New-Jersey, Pennsylvania, North-Carolina, South-Carolina, Georgia, and the Bahama islands, he writes as follows: "*The society for propagating the gospel in foreign parts is a very good, pious, and most laudable design: but the execution thereof in British North America is much faulted [or blamed].*"

Any

' Any indifferent man could not avoid ima-
 ' gining that by " propagating the gospel in
 ' " foreign parts" was meant " the conversion
 ' " of the natives of such parts;" " as the royal
 ' charters and proprietary grants of our plan-
 ' tations enjoin the civilizing and conversion of
 ' the Indians by doctrine and example. It is
 ' astonishing to hear some of these missionaries,
 ' and their friends, indiscreetly affirm that this
 ' was no part of the design, because not expres-
 ' sed in strong terms in their charter. King
 ' William, the granter of the charter, cannot
 ' be supposed to have meant that the expulsion,
 ' or elbowing out, of sober, orthodox dissenters,
 ' was the principal intention thereof; though
 ' it is at present their chief practice, there not
 ' being one missionary (the Albany and Mohawk
 ' missionaries excepted,) that takes the least no-
 ' tice of the Indians. The society, being sen-
 ' sible of this neglect have in their latest mission,
 ' (that of Mr. Price for Hopkinton, about 30
 ' miles inland from Boston,) instructed their
 ' missionary to endeavour the propagation of the
 ' Christian religion among the neighbouring
 ' Indians.

The true and
 original de-
 sign of the in-
 stitution of the
 English socie-
 ty for propa-
 gating the
 gospel.

' The

The practice
of the mission-
aries from the
said society in
the year 1750.

Dangerous
tendency of
the said prac-
tice.

The practice of the present missionaries is to obtain a mission to our most civilized and richest towns, where there are no Indians, no want of an orthodox christian ministry, and no Roman-Catholicks; which are the three principal intentions of their mission. They seem absurdly to value themselves upon the diversion (I do not say, perversion) of the Presbyterians and Congregationalists. All men have a laudable veneration for the religion of their ancestors; and the prejudices of education are hardly to be overcome. Why then should a person who peaceably follows the orthodox, allowed, or tolerated, way of his forefathers, be over-persuaded to relinquish it, though by an interceding wavering [that is, by the uncertain state of mind that intervenes between the beginning to abandon an old set of religious opinions and the final adoption of new ones,] there is danger that the man may be overset and sink into infidelity? The missionaries seem to value themselves more upon this than upon the conversion of a Heathen to our civil, national interest, and to Christianity; or than upon the reformation of a Roman Catholick, (which is much wanted in Maryland;)

‘ land;) or the preservation of the descendants
 ‘ of British ancestors from running into infi-
 ‘ delity; of which there is much danger in
 ‘ North-Carolina.

‘ In the charter of the said society it is
 ‘ said, that in several of the colonies and fac-
 ‘ tories beyond the seas the provision for the
 ‘ maintenance of orthodox ministers is very
 ‘ mean, and that in many others there is no
 ‘ provision at all made for this purpose; and
 ‘ that therefore the society is established for the
 ‘ management of such charities as shall be re-
 ‘ ceived for this use. Yet it so happens that
 ‘ the missionaries of the society are not station-
 ‘ ed in such poor out-lying towns as are de-
 ‘ scribed in the above manner in the charter,
 ‘ but in the most opulent, best-civilized, and
 ‘ christian, towns of the provinces; that is,
 ‘ in all the metropolis-towns of the colonies,
 ‘ and other rich and flourishing towns in the
 ‘ same, that are well able to support, and do
 ‘ in fact support, orthodox ministers.

The missiona-
 ries have not
 settled them-
 selves in the
 out-lying
 towns of the
 several colo-
 nies of Ame-
 rica, where
 there is a want
 of a ministry
 of the gospel.

‘ In all our colonies, (Rhode-Island ex-
 ‘ cepted,) [that is, I suppose the author
 ‘ means, in all the colonies of New-England,

' except Rhode-Island, not in all the colonies
 ' of North-America] there is a parochial pro-
 ' vision for an orthodox gospel-ministry; inso-
 ' much that Dr. Bray (who is a zealous pro-
 ' moter of the society for propagating the gos-
 ' pel,) has declared that in the colonies of Mas-
 ' sachusetts Bay and Connecticut there was no
 ' need at all of missionaries.

A conjecture
 concerning
 the time when
 the design of
 the society for
 propagating
 the gospel be-
 gan to be per-
 verted.

' In the latter years of queen Ann's admini-
 ' stration, (as I conjecture,) the design of this
 ' charity was perverted from its original de-
 ' sign, (which was to convert the heathens to
 ' christianity, to preserve a sense of religion
 ' amongst the inhabitants of our distant planta-
 ' tions, and to prevent the growth of popery,)
 ' to a design of withdrawing the tolerated, so-
 ' ber, religious dissenters, or non-episcopalians,
 ' from their several persuasions to a conformity
 ' with the then high-church opinions; as a ma-
 ' nuduction to popery, and the introduction of
 ' a Popish Pretender to the Crown. But, as,
 ' by the happy succession of the present Protestant
 ' family to the Crown, all hopes of this kind
 ' are vanished, it is in vain, and will answer
 ' no end, for any party of men to foment divi-
 ' sions

' sions among good Christians. I have a very
 ' great regard for all good ministers of the
 ' Christian gospel, and have no private, or
 ' particular, resentment against any missionary:
 ' but, as an impartial historian, I could not
 ' avoid relating matters of fact for the infor-
 ' mation of persons concerned, who, by reason
 ' of distance and other business, cannot be other-
 ' wise informed.

' In the charter of the society the propaga-
 ' tion of the particular religion of the Church of
 ' England is not mentioned: the expressions used
 ' in it are general, as, "An orthodox clergy,"
 " — the propagation of the Christian religion,
 " or gospel, in foreign parts." ' Therefore
 ' missionaries ought to be men of moderation,
 ' that is, of general charity and benevolence;
 ' more especially if we consider that many dis-
 ' senters have contributed to this charity, and
 ' are worthy members of the society. Fiery
 ' zealots are detrimental to the design of the
 ' society.

' By gross impositions upon this worthy and
 ' laudable society their charity and christian

Neglect of the
missionaries
with respect to
the province
of North Ca-
rolina.

benevolence is egregiously perverted. I shall mention a few instances. First, In the large and not-well-civilized province of North-Carolina, that country being poor and unhealthy, missionaries were not fond of being sent thither; though for many years they had no gospel-minister of any denomination amongst them, and did degenerate apace towards heathenism. The neglect of religion had been carried so far in this province of late years, that great numbers of the inhabitants of it had never been even baptized: insomuch that some loose clergymen of the neighbouring province of Virginia have, at times, by way of frolick, made a tour in it and christened people of all ages at a certain price a-head, and have made a profitable trip of it, as they expressed it. And Mr. Hall, who was lately appointed missionary for the north-district of North-Carolina, writes that in the year 1749, he baptized no fewer than 1282 persons. And Mr. Moir, of the south-district of that province, informs us (in his abstract for 1749, page 48,) that he cannot give an exact account of all the persons he bath
bap-

‘ baptized in his journies, for want of a
 ‘ person to count them, but that he thinks
 ‘ they have sometimes amounted to more than
 ‘ 100 persons in one day. These two mission-
 ‘ aries were, with some difficulty, obtained
 ‘ by the solicitation of the present governour
 ‘ of North-Carolina, who wrote word to the
 ‘ society, “ That the people of his govern-
 ‘ ment had no ministers, or teachers, of any
 ‘ denomination, and that, unless some care
 ‘ was taken to prevent it, the very footsteps
 ‘ of religion would in a short time be worn
 ‘ out there.” ‘ Yet, while this province of
 ‘ North-Carolina was thus destitute of reli-
 ‘ gious instruction, the well-civilized and
 ‘ christianized colonies of New-England were
 ‘ crowded with missionaries. It is only of
 ‘ very late years that two missionaries, and
 ‘ no more, namely, the aforesaid Mr. Moir
 ‘ and Mr. Hall; have been sent to North-
 ‘ Carolina; the former to itinerate on the
 ‘ south side of the Neuse river, the other on
 ‘ the north side of that river.

‘ Secondly, one clause in the society’s char-
 ‘ ter directs that missionaries shall be sent into
 ‘ foreign

Their neglect
with respect to
Maryland.

They have
generally set-
tled in the
richest and
most populous
towns of N.
America,
which already
have a suffi-
cient number
of ministers of
the gospel.

*foreign parts “ for the instruction of those
“ who are in danger of being perverted by
“ Romish priests and Jesuits to their super-
“ stition.” “ Now this is by no means the
“ case in the colonies of New-England, though
“ that is the part of America which is the
“ most crowded with these missionaries. Ma-
“ ryland is the only colony on the continent of
“ North-America that is affected with popery:
“ and there the parochial ministers seem not
“ to endeavour to convert, or reform, the peo-
“ ple of that religion. [The missionaries of
“ the society might therefore be useful in that
“ province, yet few of them have been sent
“ there.] So that the papists, or disloyal, are
“ indulged or overlooked; and one would be
“ apt to imagine that the principal design of
“ the society had been to pervert from their
“ antient opinions in religion the loyal pro-
“ testants who dissent from the Church of
“ England, seeing that the missionaries with
“ the largest salaries are generally stationed
“ in the very loyalest, the best-civilized, and
“ most opulent towns of the colonies, which are
“ well able to support, and in fact do suffi-
“ ciently support, a protestant, orthodox, gospel-
ministry.*

Instance in the
town of Bos-
ton.

' ministry. I shall only instance in the town of
 ' Boston, the place of my residence, the metro-
 ' polis of all the British American colonies. In
 ' Boston there are many congregations of sober,
 ' good, orthodox Christians, of several denomi-
 ' nations; particularly two congregations of
 ' the Church of England; the rectors of which
 ' are very good men, and well maintained by
 ' their respective congregations; and besides
 ' these, there is another minister of the Church
 ' of England, called the king's chaplain, with
 ' a salary of 100l. sterling per annum from
 ' Great-Britain: and a superb, costly church,
 ' equal to many cathedrals, is now building by
 ' the members of the Church of England. Yet,
 ' notwithstanding these circumstances, this most
 ' excellent and laudable charity is misapplied
 ' by stationing here in Boston a superfluous mis-
 ' sionary at the charge of 70l. sterling per an-
 ' num, besides the allowance from his congre-
 ' gation. While such things are done, the so-
 ' ciety may well complain of their funds being
 ' insufficient: but, if the number of missiona-
 ' ries was lessened, and they were stationed in
 ' proper places, there would be no reason for
 ' this complaint. This would be agreeable to
 ' the

' the original design of the society, which is
 ' concisely expressed by the bishop of Saint Da-
 ' vid's in his sermon before the society in Fe-
 ' bruary, 1749-50, in these words: " An op-
 ' portunity [of extending the Christian re-
 ' ligion] is presented both among the plain and
 ' simple Indians, and among the unhappy Negro
 ' slaves. An utter extinction of christianity
 ' (meaning in North Carolina,) was no ab-
 ' surd, or groundless, apprehension." ' But
 ' so far are the present missionaries of the so-
 ' ciety from following this original design,
 ' that, in the accounts which they annually
 ' transmit to the society of their proceedings,
 ' they generally mention only the numbers of
 ' persons that have been baptized by them and
 ' admitted to the Lord's Supper, but say no-
 ' thing of the Indians that have been converted
 ' by them, or the Roman-Catholicks that have
 ' been brought over to the Protestant religion,
 ' or the methodists, or enthusiasts, that have
 ' been reduced to a sober mind, and the like;—
 ' as if these things were no part of the design
 ' of their mission. Their chief care seems to
 ' be to get a good, easy, living, and to stir up
 ' strifes and dissensions amongst those who are not
 ' members

Of the ac-
 counts of their
 proceedings,
 transmitted to
 England by
 the said mis-
 sionaries.

' members of their church, and to withdraw
 ' the wilder part of our young people from the
 ' orthodox, tolerated, way of worship of their
 ' ancestors to one that is less rigorous; which
 ' often produces divisions and disaffections in
 ' families. And sometimes it has happened,
 ' upon the decease of a congregationalist mini-
 ' ster, and the election of a new one to supply
 ' his place, that some of the members of the con-
 ' gregation have not concurred with the others
 ' in their new choice, and thereupon in resent-
 ' ment, and, perhaps, by the advice of a missi-
 ' onary, have gone over to the Church of Eng-
 ' land.

' The colony of Connecticut is smaller than
 ' many others of the British colonies, but is the
 ' most prudent and industrious colony of them all.
 ' There are no waste lands remaining in it;
 ' and it is properly supplied with orthodox mi-
 ' nisters of the gospel, who are both well qua-
 ' lified to exercise their functions, and well
 ' paid for doing so. It therefore has no need
 ' of any missionaries. Yet, from the misrepres-
 ' sentations which have been made of its condi-
 ' tion to the said society for propagating the

Meritorious
 conduct of the
 colony of
 Connecticut.

A great num-
 ber of mission-
 aries has un-
 necessarily
 been sent into
 it.

The govern-
ment of it has
been unjustly
accused of a
persecuting
spirit.

A proof of
their great
candour and
tolerating spi-
rit in religious
matters.

‘ gospel in foreign parts, this colony is crowd-
 ‘ ed with a greater number of missionaries, in
 ‘ proportion to its extent, than any other co-
 ‘ lony in North-America. And (what is most
 ‘ unjust and hard upon them,) the government
 ‘ of it has been accused (in the last abstract
 ‘ that has been published by the society of the
 ‘ proceedings of their missionaries,) of indulg-
 ‘ ing a persecuting spirit, because three or
 ‘ four mean persons have been prosecuted there
 ‘ according to law for not paying their town-
 ‘ ship-rates, in which might, probably, have
 ‘ been included their proportion towards the
 ‘ supporting of a gospel-ministry, as endowed
 ‘ by a legal town-meeting. This has been
 ‘ made the ground of a charge of persecution.
 ‘ But so far are the people of New-England,
 ‘ at present, from being governed by a per-
 ‘ secuting spirit, that in the provinces of
 ‘ Massachusetts Bay and Connecticut, upon a
 ‘ representation made upon this subject and
 ‘ transmitted to England, there have been
 ‘ acts of assembly made, by which it has been
 ‘ enacted, “ That all such as professed them-
 ‘ selves to be members of the Church of Eng-
 ‘ land should be entirely excused from paying
 ‘ any

“ any taxes towards the settlement of any
 “ minister, or building of any meeting-house,
 “ and that the taxes of such persons should be
 “ paid to their Church-of-England minister.”
 ‘ And by similar acts of assembly passed in the
 ‘ years 1728 and 1729, Anabaptists and
 ‘ Quakers are exempted from paying any
 ‘ thing to the parish, or township, ministry.
 ‘ So far are the people of Connecticut from
 ‘ being of a persecuting spirit; and so ill-
 ‘ grounded are the aspersions that have been
 ‘ thrown out against them on that account!’

From these passages* of Dr. Douglas's book
 you may perceive that the account I gave you
 above of the temper and conduct of these
 missionaries of the English society for propa-
 gating the gospel was not ill founded.

FRENCHMAN.

I do indeed perceive it plainly : for these
 passages from Dr. Douglas more than make

* In the passages here cited from Dr. Douglas's
 Summary I have taken the liberty to correct a few gram-
 matical errors and other inaccuracies of expression, but
 without the smallest variation of the sense ; as those who
 will take the pains of comparing them with his book
 will easily perceive.

out your assertions. But what I most admire of all that you have read to me from that author, is the great candour and moderation of the two New-England colonies of Massachusetts Bay and Connecticut, with respect to those inhabitants amongst them who dissent from their established mode of worship, and are either Anabaptists or Quakers, or members of the Church of England. To exempt these dissenters from making the common payments for the maintenance of the ministers of the congregational church, (which is there the religion established by law), and for the repairs of the buildings erected in the several parishes for publick worship; and to require them to make those payments to their own ministers, and for the support of their own peculiar modes of worship; is *something more than tolerating* them:—it is giving them a kind of *co-establishment* in common with their own church. For *toleration*, according to my conception of its meaning, implies no more than a permission to people who differ from the established religion in any country, to assemble together in places of their own building, or procuring, to worship God in their

The governments of Connecticut and Massachusetts Bay have more than tolerated the Church of England in those provinces.

The true notion of toleration.

their own manner, by the assistance, or ministry, of ministers of their own chusing, and who are paid by their own voluntary donations, or contributions. It does not seem to require, as a necessary ingredient of it, an exemption from the ordinary contributions paid by the other inhabitants, by virtue of the publick ordinances of the country, towards the support of the publick religion established in it, any more than those paid by the same authority, towards the maintenance of the publick roads, or bridges, or fortresses, or other publick buildings of the country, or towards the maintenance of the judges and other persons concerned in the administration of publick justice in it, or any other publick institution which the majority of the people have thought fit to establish in it. Such an exemption from the contributions made by the other inhabitants of those two provinces to the maintenance of the publick religion and mode of worship established in them, is therefore an indulgence beyond mere toleration. And the law which, you say, has been passed in those provinces to compel the members of the Church of England in every district

It does not require an exemption from the ordinary contributions towards the support of the established religion of the country.

trict of them to pay those contributions to their own episcopal minister, instead of the established congregationalist minister, goes another step further, in favour of the Church of England, than even that indulgence, and gives that church *an establishment* in those provinces, in common with the congregational mode of worship which is followed by the majority of the inhabitants of them. The members of the Church of England ought therefore to be full of gratitude to the assemblies of those two provinces of Connecticut and Massachusetts Bay for their uncommonly kind treatment of the persons of their persuasion, and more especially of their clergy, (who by this means get a legal maintenance in those provinces,) instead of complaining that they are persecuted by them. But the pride of some religionists is so great that they are apt to consider themselves as persecuted when they are only restrained from persecuting people of other persuasions. And this seems to have been the case in some degree with those members of the Church of England who, you tell me, have complained of the persecution of their brethren in Connecticut and Massachusetts Bay.

Great thanks
are due to the
governments
of Connecticut
and Massachusetts Bay
by the members
of the Church of
England,

E N G-

ENGLISHMAN.

I agree with you intirely in your notion of *toleration*. It is simply a *permission* by law to those inhabitants of a country who differ in their religious opinions from the majority of the people, to assemble together in places of their own procuring, and therein to worship the Supreme Being in the manner they most approve, by the assistance of ministers of their own chusing, and whom they maintain, or reward for their services, in the manner they think fit; but not with an exemption from the ordinary contributions established by law to the maintenance of the publick religion. And this is the only sense in which the members of the Church of England understand the word *toleration*, when they apply it to the Presbyterians and other Protestant dissenters in England; who are all obliged to pay their tythes and other church-dues to the episcopal ministers of their respective parishes, notwithstanding they receive no advantage from them, and have never dared, or presumed, to ask of the British parliament such an additional indulgence as that which has
been

The true notion of *Toleration*.

It implies no such exemption as is above-mentioned.

It is always used in this sense in England, when applied to the state of the Protestant dissenters there.

been granted to the members of the Church of England, by the generous and liberal assemblies of the province of Massachusetts Bay and Connecticut, of being exempted from the payment of tythes and other church-dues to the episcopal ministers of their respective parishes, upon condition that they shall pay them to the dissenting ministers of their own tolerated congregations. Such a request has never yet been made, and, I believe, never so much as intended, or proposed, to be made, to the British parliament by the Protestant dissenters in England: and, if it had been made, it is next to certain that it would have been highly resented by the bishops and clergy of the established church, and by great numbers of the lay members of it, as a bold and seditious attempt to undermine the Church of England, and would have been rejected with high disdain by both houses of parliament; and perhaps it might even have endangered the continuance of that simple and naked toleration which has been enjoyed by the Quakers and some others of the Protestant dissenters from the time of the great Revolution, in 1689, to the present time, by
virtue

virtue of an act of parliament passed soon after that happy event, and called *the Act of Toleration*. So far are the members of the Church of England in Great-Britain from equalling the Congregationalists of Massachusetts Bay and Connecticut in the extent and liberality of their principles of toleration towards persons who dissent from them in religion !

FRENCHMAN.

Since these are the notions of toleration that prevail in England, it is really astonishing that any members of the Church of England should have had the assurance to complain of the people of Connecticut in the manner Dr. Douglas mentions, as guilty of persecution, when in truth their conduct has been of a direct contrary tendency.—But I observed, as you were speaking just now of the act of toleration in England, you expressed yourself with some degree of caution concerning the Protestant dissenters who were intitled to the benefit of it ;—as if it did not extend to all Christians and Protestants who dissent from the Church of England, but

Of the degree
of religious li-
berty allowed
in England.

only to Quakers and some other sorts of Protestant dissenters who were more favoured than the rest. Pray, is that the case in England?—If it is, I must needs be surprized at it, because I have always heard that England was a very free country with respect to religious matters, and afforded a most ample toleration to all sects of Christians, except us Roman-Catholicks, who, I know, have long been considered as enemies to the civil government of England and the succession of the Crown in the present royal family, and have been kept under discouragements on that account. Whether there have been just grounds for these jealousies and discouragements of our sect, I shall not now inquire. But I had imagined that all other sects of religion whatsoever, and more especially all the Protestant dissenters in England, (who have always, as I have been informed, been the most steadily attached to the Protestant succession of the Crown in the house of Hanover of any of the parties in England,) had enjoyed a legal toleration there. And yet your cautious expression upon the toleration-act makes me begin to doubt whether I have
not

not been mistaken in this matter. I beg therefore, if I have, that you would set me right.

ENGLISHMAN.

Indeed, my friend, you have been very much mistaken. The toleration allowed by law in England to dissenters from the established church is very far from being so extensive as you have been led to imagine. For, in truth, it extends to but a few of the present set of Protestant dissenters, to wit, to those only who are willing to subscribe all the thirty-nine articles of faith of the Church of England, except three and a half, which are specified in the act of toleration; which is a condition that the majority of the present set of dissenters from the Church of England make a scruple of complying with, though it was not objected to by the dissenters of king William's time, when that act was passed. The majority, therefore, of the present set of Protestant dissenters receive no benefit from this statute, but continue exposed to the penalties of divers very severe acts of parliament, which were passed in the reigns

The act of toleration in England extends to but a small part of the present set of Protestant dissenters.

The majority of them continue to be liable to the penalties of several severe acts of parliament.

M m m 2 of

of queen Elizabeth and king Charles the Second, in times of violent party-rage, and have never been repealed. This was thought by many people an uneasy and an unworthy situation for Protestant dissenters (the most faithful subjects in the kingdom, and the most uniformly and zealously attached to the Protestant succession) to continue in, notwithstanding those persecuting acts had not for many years past been put in execution against them: because a change in the temper of ministers of state to their disadvantage, or even the malice or avarice of individuals, might at any time make them suffer the whole weight of those oppressive penalties. To remove therefore the possibility of such ill treatment of so worthy a part of the community, and to give them a more permanent security against persecution, a motion was made, about four years ago, in the British House of Commons, to extend the benefit of the toleration-act above-mentioned to all sorts of Protestant dissenters, as well as to those who would subscribe the aforesaid articles of the Church of England, upon condition only that, instead of subscribing these articles, they should make

A bill was brought into the House of Commons about four years ago to extend the toleration act to them.

a de-

a declaration that they were Christians and Protestants, and that they acknowledged the scriptures of the Old and New Testament to contain a revelation of the mind and will of God, and that they received and adopted the same as the rule of their faith and practice. These, I think, were nearly the words of the proposed declaration; which seems to be as good a test, or mark, of a true Christian upon the general principles of Protestants (which acknowledge the Bible only to be the foundation of true religion, without any mixture of any subsequent human authority,) as can well be imagined, and should therefore, one might have expected, in these days of free inquiry and liberality of sentiment, have been allowed to be sufficient, in so free a country as England, to intitle the persons who would make it, to the benefit of the aforesaid act of toleration. And so, it seems, a majority of the British House of Commons esteemed it: for they permitted a bill to be brought into their house for extending the benefit of the said toleration-act to such dissenters as would make this declaration; and, when such a bill was accordingly brought

It passed the House of Commons, but was rejected by the House of Lords thro' the influence of the bishops.

brought in, they passed it without much difficulty. But the bishops were of a different opinion: and, by means of their opposition to it in the House of Lords, the bill was rejected by that house. And, upon a renewal of the same attempt in another session of parliament, the event was the same as before: the bill presented to the House of Commons in favour of the Protestant dissenters was again passed by that house, and with a greater majority than before, but was thrown out, by means of the bishops, in the House of Lords. So that the majority of the present set of Protestant dissenters in England, to wit, all those who make a scruple of subscribing thirty-five articles and a half out of the aforesaid thirty-nine articles of faith of the Church of England, are at this day out of the protection of the law, and liable to the severe penalties of queen Elizabeth's and king Charles the Second's statutes against their predecessors. They, however, enjoy a degree of temporary quiet and security in the exercise of their modes of divine worship, by connivance, which is almost as compleat as if they had an expresse toleration by law; it being universally

The dissenters, however, enjoy the free exercise of their mode of worship in great security by connivance.

fally allowed by all sorts of people in England,—even by the bishops who refused to give them a legal toleration,—that it would be scandalously unjust and oppressive to put the laws against them in execution. But this only makes the expediency and justice of giving them a legal toleration the more manifest; agreeably to what was very candidly and honourably declared, upon the occasion of one of the aforesaid bills in parliament for that purpose, by a noble lord in a high office about the king; I mean, earl Talbot, the lord steward of his majesty's household: who told the dissenting ministers that waited on him to request his vote and assistance in their behalf, “that he certainly
 “ should give his vote for protecting them
 “ against the penalties of those laws, as he
 “ could not conceive either the justice or
 “ wisdom of permitting laws to continue in
 “ force against them, which all mankind
 “ confessed it would be infamous to carry
 “ into execution.”—This is the best account I can give you of the degree of religious liberty enjoyed by the Protestant dissenters in England at this day; which, you see, is considerably short of what you had supposed it.

A just remark of earl Talbot on the propriety of extending the toleration-act to all Protestant dissenters.

FRENCH-

FRENCHMAN.

It is indeed very greatly short of it; and it does not do much honour to the candour and liberality of sentiment of the governing part of the English nation; though the temper, and mildness, and generosity, of individuals seems to soften the harshness of their narrow and oppressive laws. But while things remain in this state in England, it is but justice to acknowledge that New-England bears away from Great-Britain the palm of religious candour and toleration, though many people, (from their ignorance, I presume, of the present laws and temper of the provinces of New-England,) are apt to suppose the contrary. And, surely, after thus refusing a legal toleration to the Protestant dissenters in England, it by no means becomes the bishops of the Church of England, or any of their clergy, who follow and adopt their sentiments, to complain of the persecution of the members of their church in New-England, as, Dr. Douglas tells us, was done by some of the missionaries of the English society for propagating the gospel in the year 1749. But

I now

The people of New-England are of a much more tolerating disposition than the people of Great-Britain.

I now see plainly what sort of people those missionaries are, and with what view they go to North-America, and with what kind of religious spirit they are animated.

ENGLISHMAN.

That the views and conduct of those missionaries are such as Dr. Douglas has described them, is but too well known to all persons who have lived in, or are acquainted with the state of, the English colonies in North-America : so that it is hardly necessary to bring proofs of so notorious a truth. However, I will just mention one more authority in support of it, which every body must allow to be a weighty one. It is that of Mr. William Smith, the learned and eminent lawyer of New-York, whose history of that province I have already had occasion to cite in the former part of our conversation. In the 4th chapter of that valuable history, towards the end, this gentleman expresses himself in these words: “ *One of the king’s instructions to our governours recommends the investigation of means for the conversion of Negroes and Indians. An attention to both,* VOL. II. N n n “ *especially*

Extracts from
Mr. Smith’s
History of
New York
concerning
the conduct of
the above-
mentioned
missionaries
from the Eng-
lish society for
propagating
the gospel.

“ especially the latter, has been too little re-
 “ garded. If the missionaries of the English
 “ society for propagating the gospel, instead of
 “ being seated in opulent christianized towns,
 “ had been sent out to preach among the savages,
 “ unspeakable political advantages would have
 “ flowed from such a salutary measure.”

This author further tells us, in the same
 chapter of his history, that ‘ these episcopal
 ‘ missionaries, to enlarge the sphere of their
 ‘ secular business, attempted, not many years
 ‘ ago, by a petition to the late governour
 ‘ Clinton, to engross the privilege of solemnizing
 ‘ all marriages: upon which a great clamour
 ‘ ensued, and the attempt proved abortive.
 ‘ Before that time, says he, the ceremony [of
 ‘ marriage] was performed [not only by all
 ‘ Protestant ministers of the gospel, but]
 ‘ even by justices of the peace; and the judges
 ‘ of the courts of law have determined such
 ‘ marriages to be legal. The governour’s li-
 ‘ cences now run, “ To all Protestant mini-
 “ sters of the gospel.” ‘ Whether the justices
 ‘ act still, when the bans are published in our
 ‘ churches, (which is customary only in the
 ‘ marriages

‘*marriages of the poor*) *I have not been informed.*’ By this passage it appears that the episcopal clergy in the province of New-York claim a kind of superiority over the other Protestant ministers, as if they were *established* in the province, and the others only tolerated; a pretension that has given great disgust there to the Protestants of other sects. Indeed Mr. Smith expressly says in another passage, ‘*that the Episcopalians in that province sometimes pretend that the ecclesiastical establishment in England extends there; but,* he adds, ‘*that the whole body of the dissenters are averse to the doctrine.*’ And then he gives his readers a long occasional paper, which had been published at New-York, in September, 1753, under the title of *The Independent Reflector*, in which, according to the title of it, *the arguments in support of the establishment of the Church of England in that province are impartially considered and refuted.* I refer you for those arguments and the answers to them, to that paper itself, which seems to be full of good sense; and I mention it on the present occasion only to shew that the views and pretensions of the episcopal missionaries in

The Episcopalians in the province of New-York pretend that the Church of England is established in that province.

This pretension has given great uneasiness to the other Protestants of that province.

The Episcopalians of the province of New-York are only a small part of the inhabitants.

that province (whether well or ill founded, in point of law ;) have been such as to excite the jealousy, and alarm the fears, of the other sects of Protestants in the province ; to whom, in point of number, they bear a very small proportion, being, as Mr. Smith informs us, fewer than one-fifteenth part of them. Now surely, good policy will never permit the ministers of state in England to disgust 15 parts out of 16 of the whole people of a very loyal and affectionate province (for such the province of New-York has always been esteemed till the present unhappy disputes with Great-Britain, which seem to have united the whole continent of America against her ;) in order to gratify the prejudices of the remaining 16th part,

The sentiments of the body of the people in the province of New-York upon this subject, are in favour of an equal universal toleration of Protestants without an establishment of any.

There is one more passage in this respectable author, which I am sure you will be glad to hear, as it gives a lively representation of the sentiments of the majority of the people of the province of New-York upon this subject. It is in these words: "*The body of the people are for an equal, universal, toleration of Protestants, and are utterly averse*"

“averse to any kind of ecclesiastical establish-
 “ment. The dissenters, though fearless of
 “each other, are all jealous of the episcopal
 “party, being apprehensive that the counte-
 “nance they may have from home will foment
 “a lust for dominion, and enable them, in
 “process of time, to subjugate and oppress their
 “fellow-subjects. The violent measures of some
 “of our governours have given an alarm to
 “their fears. And, if ever any other gentle-
 “man, who may be honoured with the chief
 “command of the province, shall begin to di-
 “vert himself by retrenching the privileges and
 “immunities they now enjoy, the confusion of
 “the province will be the unavoidable conse-
 “quence of his folly. For, though his majesty
 “has no other subjects upon whose loyalty his
 “majesty can more firmly depend, yet an abhor-
 “rence of persecution, under any of its appear-
 “ances is so deeply rooted in the people of this
 “plantation, that, as long as they continue their
 “numbers and interest in the assembly, no at-
 “tempt will probably be made upon the rights
 “of conscience without endangering the pub-
 “lick repose.” This was written in the year
 1756. And there is no reason to think that
 the

the temper and sentiments of the people of that province, upon this subject of religious liberty, have undergone any material alteration since that time.

FRENCHMAN.

A remark upon the behaviour of the episcopal clergy in New-England and New-York.

I see plainly by these accounts of Dr. Douglas and Mr. Smith, that the Church-of-England clergy in North-America, and more especially in the provinces of New-England and New-York, have, by their high pretensions to superiority and a legal establishment, excited a great deal of uneasiness and apprehension in the minds of the other Protestants of those provinces; which, considering how small their sect is in comparison of those other Protestants, seems to me to have been a very arrogant and seditious kind of behaviour, and such as the governing powers of those provinces ought strongly to have discountenanced. And, as they have carried themselves in so lofty a manner in those provinces notwithstanding the smallness of their number, and their want of a head to unite them, I can easily conceive that they would grow still more troublesome and dangerous to all the other

The other Protestants have just grounds to be apprehensive of ill consequences from the establishment of a bishop in N. America.

other Protestants, if they were once to get a bishop established among them to be their head or leader ; more especially if that bishop (as I suppose would be the case,) was saluted by the title of *Lord*, and had a noble mansion that would be called a *palace*, and a large landed revenue annexed to his office, and perhaps some honourable station in the civil government of the province, as, for instance, a seat in the council. I therefore am not at all surprized at the conduct of the other Protestants in endeavouring to prevent such an establishment, and think it may be perfectly justified by the principles of self-defence. But, pray, what steps have at any time been taken by those mischief-making missionaries of the society for propagating the gospel, or by the other Church-of-England clergy in America, to procure the establishment of a bishop amongst them ? and what countenance or assistance have they met with in England in the prosecution of their design ? and by what arguments did they endeavour to promote it ?

E N G-

ENGLISHMAN.

Of the steps
that have been
taken, and the
arguments
that have
been used, to
induce the go-
vernment of
England to e-
stablish bi-
shops in Ame-
rica.

These are questions which I doubt whether I shall be able to answer in so full a manner as you would wish. However, I will endeavour to give you some sort of satisfaction concerning them.

The missionaries and other clergymen of the Church of England in America who have been most solicitous to obtain a bishop there, (for I believe the laity of that persuasion there have seldom stirred much in the business) have endeavoured to interest in their favour the high-church party in England, (who are zealously attached to episcopal government in the church, and anxious to extend it wherever they possibly can,) and more especially the English bishops that are of this way of thinking. To these, I presume, they represent the low state of the Church of England and its clergy, in the northern parts of North-America, as an object of compassion, and set forth the great effect which the establishment of a bishop among them would have in raising the dignity of it in the eyes and estimation of the common people by the splendor annexed

annexed to that office, and thereby drawing them away from the more simple modes of worship of the Presbyterians and Independents, or Congregationalists, to that of the Church of England, which would be governed by so respectable a head. And thus the interest of the Church of England would be promoted, or the number of its votaries increased, by such a measure; which to the zealous lovers of episcopacy will appear a most important advantage. With respect to the southern provinces of North America, and particularly Maryland, Virginia, and South-Carolina, in which the majority of people are already of the Church of England, I imagine they hold a different and more peremptory language, and represent the appointment of a bishop in those provinces as a piece of justice both to the clergy and the laity of them;—to the clergy, or rather to the young men that desire to become so, that they may not be put to the expence and danger of crossing the Atlantick ocean in order to receive episcopal ordination; and to the laity, that they may not be without the benefit of the important office of episcopal confirmation,

And thus from a motive of compassion and of zeal for making converts to the church in the first case, and from a pretended ground of justice in the second, they have contrived to interest some of the bishops of England, and perhaps some of the very zealous episcopals among the laity there in favour of their project of establishing bishops in America. I said a *pretended* ground of justice in the second case, because there never can be a real ground of justice for establishing a bishop in the southern provinces of North America, notwithstanding the Church of England is established there by law, till the body of the clergy at least, if not of the laity, in those provinces are desirous of having one; which we have already observed they have not hitherto been. But this *seeming* ground of justice serves for the missionaries; and the English bishops, and others who wish well to their project, to declaim upon, in order to persuade the ministers of state in England to carry it into execution.

Another argument they often make use of in support of their favourite project, is of a
political

political kind. They represent the members of the Church of England in America as almost the only loyal subjects in that country, or the only friends to kingly government; the Protestants of other sects being, as they say, for the most part, inclined to a republican form of government, in imitation of that which their ancestors set up in England after they had put king Charles the 1st to death. This tragical event is a favourite topick of discourse with them, and a never-failing source of lamentation and invective against the dissenters from the Church of England. They forget, or seem to forget, that this act of violence was done by only a small party in the then House of Commons, with the assistance of the army that had been raised by the parliament to oppose king Charles; or, I might almost say, it was done by the army alone; since, before they could get an apparent concurrence of the House of Commons with them in that business, they were obliged to exclude from it by main force, (by placing guards at the door of the room in which they assembled,) three fourth parts even of those members who had conducted the war against

The Presbyterians and other Protestant dissenters from the Church of England in America have been represented as enemies to kingly government: but without grounds,

the king; after which the remaining fourth part, first, passed a vote to annihilate the House of Lords, as useless and dangerous, and then made an act of parliament (if it may be so called,) to bring the king to a trial for having made war upon his people. I don't mean on this occasion either to blame or to justify the conduct of the said remnant of the House of Commons, and their supporters, the army, in so doing. That is a nice and much-agitated question, which has no relation to the subject of our present inquiry. But I mention it only to shew, that a great majority of the House of Commons of that time were averse to that sanguinary measure. And this great majority, which was so excluded by the army, was called *the presbyterian party*. At the same time, notwithstanding the power and fury of the army at that conjuncture, which made it dangerous for any man to oppose their proceedings, a body of sixty presbyterian ministers presented a petition to the House of Commons in favour of the king, and in opposition to the violent measure then in hand. And, lastly, it was by the re-admission of these

Of the efforts made by the Presbyterians of England in the last century in favour of kingly government.

these same excluded presbyterian members of parliament into the House of Commons by the assistance of General Monk, in February, 1659-60, that the restoration of monarchical government, in the person of Charles the Second, was brought about. It is therefore by no means true that the Presbyterians of England have been generally averse to monarchy and inclined to a republican government, but rather the reverse; though they have always (to their honour be it spoken,) been enemies to arbitrary and absolute government, and zealous in the support of those reasonable limitations and restraints on the power of the Crown which are prescribed by the English constitution, and by which it is prevented only from doing mischief to the subject, while it enjoys a most extensive power of doing good. Such are the sentiments of the Protestant dissenters of England; and such, I believe, are those also of their brethren in North-America. But, I am inclined to think, they have often been otherwise represented to the ministers of state, and other men of power, in England, by the English missionaries in North-America, and other

The real sentiments of the Presbyterians both in England and North-America with respect to kingly government.

other sticklers for the establishment of episcopacy in those provinces : and these representations have, probably, sometimes made an impression on those to whom they were addressed.

It has been pretended that the establishment of a bishop in America is necessary even to the toleration of the religion of the Church of England in that country.

Another argument that has been used by them in favour of this project of establishing bishops in America, is one that, I believe, you would hardly suppose they could ever have thought of, after what I have told you of the late harsh conduct of the bishops of England in refusing a mere legal toleration to the present set of Protestant dissenters there. It is this : " That, unless a bishop be established in America, the Church of England is not even tolerated there." This is a strange position, and seems almost to be a contradiction in terms ; since it is saying in other words, " that the Church of England is not tolerated in America, unless it is *more* than tolerated." For *establishment* is something *more than toleration*, as *connivance* is *something less*. But this the bishops of England, and these episcopal missionaries who contend so eagerly for the establishment of a bishop in America, do not seem to understand.

FRENCH-

FRENCHMAN.

I wonder they should not attend to so clear and obvious a distinction. It shews, I think, that they have not much considered the subject of religious toleration: for otherwise they could not have failed to make it. To me it appears as clear as day-light that there are five different ways in which a religion may be treated in a country, which are usually distinguished by the five distinct names of *Persecution*, *Connivance*, *Toleration*, *Endowment*, and *Etablissement*.

Of the different ways in which a religion may be treated in a country.

When the government of a country forbids the professors of a religion to meet together in any place whatsoever to worship God in the manner they most approve, and annexes certain penalties to their doing so, and these penalties are inflicted on the offenders when they break this prohibition, such a religion is properly said to be under *persecution*. Thus, in Spain and Portugal and Italy, and in many parts of Germany, (as I have heard,) the Protestant religion is *in a state of persecution*: for, if Protestants meet together in any place;

Of a state of persecution.

place, and worship God according to the rites of their church, they are liable to be put in the inquisition, or to suffer other severe penalties enacted by the governments of those several countries for the discouragement and suppression of their religion, which is there called a heresy and considered as a heinous crime: and these penalties are actually inflicted upon them whenever they are proved to have been guilty of transgressing the laws upon this subject. They are therefore in those countries in a state of actual persecution. And the same thing may be said of the Protestants in France upon the revocation of the edict of Nantz, in the year 1685, and at various times since, and even within these last twenty years, when their ministers have been hanged for performing divine service amongst them. But I am told that since the late war, (which ended in the year 1763,) the French government has forbore to exercise these severities against its Protestant subjects, and that they have been tacitly permitted to hold their religious assemblies without molestation. But still the severe laws made against them continue unrepealed, and may be put in execution whenever

Of a state of
connivance.

ever the French government shall think fit: and they suffer the inconveniences of various important civil disabilities as much as ever; as, for example, with respect to the marriages solemnized among them by their own ministers; which are all considered as void in law, and convey no civil rights to either the married parties themselves or their issue. Those disabilities are extremely inconvenient, and are in truth a species of persecution. But, as the act itself of meeting together to worship God according to the mode of their religion is no longer actually treated as a crime in France, and made the ground of immediate punishment, I think we may say that the Protestant religion in France is at present treated with *connivance*, which is a sort of *actual*, but *not legal*, toleration, and is a middle state between actual persecution and legal toleration.

And, if I rightly understand your account of the present condition of the Protestant dissenters in England, they also, or at least the majority of them, are kept in this middle state, of *connivance*, though the penalties to

which they are liable by law may not be so severe as those against the Protestants in France.

ENGLISHMAN.

The majority of the Protestant dissenters in England enjoy only a connivance at the exercise of their religion.

You conceive this matter very rightly. A very large majority of the Protestant dissenters in England are denied the benefit of a legal toleration, and escape the pressure of the penal laws against them only by the *connivance* of the government and the general mild temper of the times. But the laws to which they are liable are not so severe as those against the Protestants in France, their ministers not being liable to be hanged. But, pray, go on with your account of the five different manners in which a religion may be treated in a country; as it seems to be a very just and clear one.

FRENCHMAN.

Of a state of legal toleration.

Next to *Connivance* is *legal Toleration*; which consists (as we have already observed) in a legal permission to those who dissent from the established religion of the country, to meet together and worship God in the manner they most

most approve, without any molestation whatsoever. This was the case with the Protestants in France before the revocation of the edict of Nantz, in 1685: for at that time they might lawfully assemble in their churches for the purpose of divine worship, and their ministers might administer the sacraments to them, and perform the other offices of their religion, without any sort of danger. And this, according to your account, is the condition of the Quakers in England, and of those few other Protestant dissenters there who subscribe the articles of faith of the Church of England in the manner prescribed by king William's act of toleration. And it was also the condition of us, Roman-Catholick Canadians, before the late Quebec-Act. For we were permitted to assemble in our churches and chapels to hear mass, and receive the sacraments according to the rites of the Church of Rome, and our priests were permitted to perform all the offices of our religion as often as they pleased, without any molestation whatsoever, or any opinion, or apprehension, in any one, that they could be legally molested for so doing; in short, we had the same de-

Of the state of the Roman-Catholick religion in the province of Quebec before the late Quebec act.

gree of freedom in those respects before the said Quebec-Act as we have had since. But the tythes, and other profits, paid to our priests as a compensation for their spiritual services to us, were paid them voluntarily by their Roman-Catholick parishioners, without any right in the priests to enforce the payment of them by suits at law. This was a state of *perfect Toleration*.

It was something more than barely tolerated there.

Indeed, if we speak with strictness, this was more than perfect toleration. It was perfect toleration accompanied with the additional advantage of exemption from paying contributions for the support of any other religion. For, if it had pleased the government of Great-Britain, immediately after the conquest of Canada, to establish the Protestant religion there, according to the mode of the Church of England, and consequently to place ministers of the Church of England in all our parishes, and put them in possession of all the parsonage-houses in the country with the glebe-land thereunto belonging, and to vest in them a right to the tythes which we had formerly paid to our own priests;—

priests ;—I say, if this had been done throughout the province, or, at least, in all the benefices that became vacant after the conquest and cession of the province to the Crown of Britain, it would not have been inconsistent with the treaty of peace in 1763, nor with a perfect toleration. For we might still have been permitted by law to assemble in other houses of worship, which we might have provided for the purpose, and to hear mass and receive the sacraments according to the rites of the Church of Rome in such new meeting-houses, or mass-houses, by the ministration of Roman-Catholick priests whom we might have provided to officiate to us, and whom we might have maintained by voluntary contributions, which we must in such case have been obliged to make for that purpose, over and above the tythes which we must have paid to the Church-of-England ministers of our respective parishes. And such a permission would have been a complete toleration. For we should then have been upon the same footing in this respect as the Quakers in England, and those few of the other Protestant dissenters there who subscribe

scribe the articles of the Church of England in pursuance of the act of toleration; they being obliged to pay tythes to the Church-of-England ministers of their respective parishes, notwithstanding they maintain ministers and places of worship of their own. But such a toleration of our religion, accompanied with such a burthen of maintaining an establishment of the Protestant religion, from which we should have received no benefit, would have been much less liberal and generous than that which, through the mildness of our humane conquerors, we were permitted to enjoy from the time of the conquest of the province in September, 1760, to the 1st of May, 1775, when the late Quebec-Act took place in it: and perhaps such a system would have excited great complaints amongst us. But those complaints would not have arisen from the want of a free toleration of our own religion (for that we should have had;) but from the obligation that would have been imposed on us to pay a heavy tax to maintain another religion, from which we should have received no benefit; which obligation we should have thought as great a hardship

hardship as if we had been forced to pay the same tythes and taxes for the maintenance of the fortifications of Gibraltar or Port-Mahon, or for the improvement of the small livings in England or Wales, or any other purpose that had no relation to us and from which we were to derive no advantage. This, you see, is a distinct kind of hardship from a denial of religious toleration ; and, to persons sincerely attached to their religion, it is a hardship of a much less offensive nature. Yet it is a considerable inconvenience, and such as ought never, either in justice or policy, to be imposed on the majority of the people in any country ; and more especially when the majority is so great as that of the Roman-Catholic inhabitants of Canada in comparison to the Protestants. I therefore applaud both the wisdom and justice of the English government in not having immediately established the Protestant religion amongst us, (by taking our churches from us, and compelling us to pay tythes to a set of Church-of-England ministers,) and at the same time granted us a mere toleration of our own religion, (if we chose to be at the additional expence of maintaining

taining it,) upon the plan of the toleration of the Protestant dissenters in England, who comply with king William's act of parliament: and I think we had great reason to be thankful to the English government for such an instance of moderation. But we all wished that they had stopped there, and, after having so generously forbore to compel us to contribute to the maintenance of the Church-of-England religion, had left us equally at liberty with respect to our own, instead of reviving our former compulsive obligation to pay tythes to our priests for teaching it; which (if it be at all a favour to us) we must needs consider, in the *protestant* parliament of Great-Britain, as a *favour of supererogation*. But I think I have sufficiently explained my idea of *legal Toleration*.

Of a state of
endowment.

I come now to what I call a *state of Endowment*. It seems to me that it is very possible that the governing powers of a country, though they may think it necessary in point of justice to permit the followers of a particular religion to meet together in moderate numbers to worship God in their own way,
may

may yet not think it expedient to let that religion take root in the country in a manner that is likely to increase the number of its votaries. And in this case they may forbid its being endowed by gifts of land, or other permanent property, assigned to trustees for the permanent support of it. This, I apprehend, would not be inconsistent with toleration, nor at all unjust towards the professors of such barely-tolerated religion; because every state has a right to judge of the utility of the purposes for which it allows the property of any of its members to be aliened in mortmain.

But on the other hand it is possible that a government may think a particular mode of religion, though not worthy to be supported and encouraged by public authority, yet to be so very innocent and inoffensive to the state that they may safely indulge the professors of it with a liberty to alien their land, or other property, in mortmain for the permanent support of the ministers and teachers of it; as in several countries in Europe men are permitted to found professorships of the sci-

ences in universities, or to alien a part of their property in mortmain for the maintenance of such professors. Now, where this is permitted with respect to any particular religion, and men of opulence, that have been attached to such religion, have made use of the said permission, and have settled permanent funds for the maintenance of the ministers and teachers of such religion, that religion may be said *to be endowed*.

Of a state of
establishment.

Lastly, where the government of a country provide a fund by their own publick authority for the maintenance of the ministers and teachers of any religion, such a religion is said *to be established*.

Of the establishment of the Roman-Catholick religion in Canada by the late Quebec-act.

Thus the Roman-Catholick religion is said to be established at this day in France and Spain and Italy, because tythes and other publick funds are appointed by the laws of those several countries for the maintenance of the priests that teach it. And in like manner it may be justly said to be established also in this province by the late Quebec-Act; because a publick fund, to wit, the tythes of the

the popish parishioners, that is, of 49 persons out of 50 throughout the province, is thereby assigned to the Roman-Catholick priests as a maintenance and reward for performing the ceremonies, and teaching the doctrines, of that religion.

I know indeed that it has been said by some persons who are solicitous to defend that act of parliament against the various objections that have been made to it, that the Roman-Catholick religion has not been established in this province by thus assigning to the priests of it the tythes of their popish parishioners, because the protestant land-holders are not also obliged to pay their tythes to them, as they were in the time of the French government. But this affects only *the degree* of the establishment, or the *quantum* of the provision made for the maintenance of the said priests and the religion they are to teach. It is somewhat less ample than it would be if the Protestants were forced to pay tythes to them as well as the Roman-Catholicks. But the nature and design of the provision is the same in both cases. It is a fund provided by

Q q q 2 publick

publick authority for the support of priests to exercise and teach the religion of the Church of Rome. And this is all that is meant by those who have complained that the popish religion *is established* by this act of parliament, and is all that the expression of *establishing a religion* naturally and usually imports.

These are my notions of the several different states in which a religion may subsist in a country, and which are distinguished by those several names of *Persecution, Connivance, Toleration, Endowment, and Establishment*.

ENGLISHMAN.

I agree with you intirely in all your notions and opinions upon this subject, and have nothing to add to what you have said concerning it except only one observation, which seems naturally to fall in with what you have said about the possibility of a religion's being established in a country, though all the inhabitants of the country are not bound to contribute to its support. The observation I mean to add to this remark, or rather, perhaps, to derive from it, is this, “ that it is possible
“ that

Two, or more, religions may be established in the same country at the same time.

“ that two, or indeed twenty, religions may
 “ all be established in the same country at
 “ the same time.” For all that is necessary
 in order to this, is, that the legislature of the
 country should pass a law ordaining that the
 followers of each of the said religions should
 pay his tythe, or other publick payment
 (whatever it be,) to the ministers of their
 own several religions. Of such a proceeding
 we have had two examples with respect to
 two religions in the provinces of the Massa-
 chusets Bay and Connecticut, in both which
 the assemblies have done this with respect to
 the prevailing religion of the country, (which
 is that of the Congregationalists,) and to the
 Church of England; by which means the
 religion of the Church of England may be
 as truly said *to be established* in those provin-
 ces, notwithstanding the small number of its
 members in them, as the religion of the In-
 dependents or Congregationalists, though they
 are the sect of which the great body of the
 inhabitants of those provinces is composed.
 And, if the Anabaptists in those provinces,
 (who are also, as well as the Church-of-
 England men, exempted from contributing
 to

There are ex-
 amples of this
 in the provin-
 ces of Massa-
 chusets Bay
 and Connecti-
 cut in New-
 England.

to the support of the congregationalist ministers,) are compelled by law to pay their contributions to the maintenance of their own ministers, (which I do not find to be clearly asserted by Dr. Douglas in the passages I have above cited from him, though I am inclined to think he means so;) I say, if this should be the case in those provinces, they will afford an instance of the co-establishment of three different religions, or modifications of the Protestant religion, in the same countries; and sometimes, we may presume, in the same parishes, to wit, the religion of the Congregationalists, the religion of the Episcopalians of the Church of England, and the religion of the Anabaptists. This instance of the candour and tolerating spirit of the Congregationalists of those two provinces of New-England (whom the missionaries above-mentioned have accused of persecution,) cannot be too much dwelt upon. It goes so much beyond the notions of toleration that prevail in England, that, I presume, it must there appear almost incredible.

We

We may therefore, I think, increase the number you have specified of the different states in which a religion may subsist in a country, from five to seven, by adding to those you have mentioned the two following; to wit, 1st, *A state of legal toleration, with the additional advantage of an exemption from the necessity of paying the contributions required from the other inhabitants of the country towards the maintenance of the established religion of it*; and, 2dly, *A state of co-establishment, in common with the religion of the majority of the people in the country*. And then these different states of a religion will be as follows; 1st, *A state of persecution*: which is the state of the Protestant religion in Spain and Portugal and Italy, at this present time, and was the state of it in France likewise before the late war. 2dly, *A state of toleration by connivance only, without repealing the laws that have been made against it*: which is the state of the Protestant religion in France at this day and ever since the last peace of 1763, as we have heard; and is most certainly that of the religion of the great majority of the Protestant dissenters in England who do not
 subscribe

An enumeration of seven different ways in which a religion may be treated in a country.

subscribe the articles of faith of the Church of England required by the act of toleration. 3dly, *A state of legal toleration, accompanied with an obligation to pay the ordinary contributions paid by the other inhabitants of the country to the maintenance of the publick religion*: which is the state of the Quakers in England and of those few of the Protestant dissenters of other denominations who subscribe the articles of the Church of England, as required by the act of Toleration. 4thly, *A state of legal toleration, without any obligation to contribute to the maintenance of any other religion*: which was the state of the Roman-Catholicks of this province of Quebec during the interval of almost 15 years, which elapsed from the conquest of the country in September, 1760, to the time when the late Quebec-act began to be in force, which was on the 1st of May, 1775. 5thly, *A state of endowment*: which, I believe, is the state of the Church of England in Pensylvania; where, (though no religion has been established by law in the province,) donations of land have (as I have heard) been made in some places by pious members of
of

of the Church of England for the perpetual maintenance of places of worship and ministers of that persuasion. 6thly, *A state of co-establishment, in common with some other religion*: which is the state of the Church of England in the two provinces of Massachusetts Bay and Connecticut, in common with the religion of the Independants, or Congregationalists. And, 7thly and lastly, *A state of sole establishment*; which is the state of the Episcopal Church of England in England and Ireland, and of the Presbyterian Church of Scotland in Scotland, and of the Church of Rome in France and Spain and Italy. And, perhaps, upon a further examination of this subject, we might find occasion to make still more distinctions upon it. But these are all that occur to me at present.

FRENCHMAN.

But—to return to the subject from which we have digressed—I beg you would inform me of the ingenious reasonings (for such they must surely have been!) by which the friends of the project of establishing bishops in America have endeavoured to

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prove

prove that the religion of the Church of England was not even tolerated without it. For to me it appears (as you said it did to you) to be almost a contradiction in terms.

ENGLISHMAN.

The argument that has been used by some members of the Church of England to prove that their religion cannot even be tolerated in North America without establishing a bishop there.

Their argument on this subject is as follows. Episcopal government, and episcopal ordination and confirmation are, all of them, essential parts of the religion of the Church of England, as much as the use of the Liturgy, or set forms of prayer, appointed to be used in that church, and the thirty nine articles of faith, which are required to be subscribed by the ministers of it. If, therefore, say they, you mean to tolerate the Church of England in America, you must let the members of it have a bishop to ordain and govern the clergy of it, and to confirm both the clergy and the laity, and exercise the other powers of the Episcopal office amongst them, as well as permit them to use the Liturgy and ceremonies of the Church of England in the places where they assemble for the performance of divine worship: and consequently, if you refuse to let them have a bishop, you do not completely tolerate them.

And

And hence, they say, arises a necessity of establishing a bishop in that country. This is the only way in which I recollect to have heard this argument stated.

FRENCHMAN.

The premisses of this argument seem to me to be just, but to have no relation to the conclusion of it ; which is the necessity of establishing a bishop in America by the authority of the king or parliament of Great-Britain : for that is what is properly to be understood by the word *establishment*, and what, I presume, the friends to the measure of an American episcopate understand by it and are desirous of obtaining. For, if they meant only that the Church-of-England men in America ought to be permitted to solicit some Protestant bishop of England, or Wales, or Ireland, to come and visit them, and reside for a year or two amongst them, and there exercise his episcopal functions of ordaining clergymen, and confirming adult persons, and the like, during the time of his residence in that country ; and that no law ought to be made to prohibit the said bishops

A remark on the said argument.

The refusal of a permission to Protestant bishops of the Church of England to go to America for a few years and exercise their episcopal functions there amongst the members of their own church would really be contrary to the principles of toleration,

from making such progresses amongst them, if they were so inclined and could obtain the proper licences from their archbishops and from the king, (who, we are told, is the supreme head of the Church of England,) to be absent for a sufficient time from their own dioceses ;—I say, if this was all that was desired by the members of the Church of England in America who complain of the want of a bishop there, I should think their request very reasonable, and should consider the refusal of it, either by the crown, or parliament, of Great-Britain, or by the assemblies of the American provinces, as a refusal to tolerate one branch of their religion. But this, I presume, is not what they are aiming at in their endeavours to procure a bishop to be sent them, because I have observed that you have all along represented their object to be *the establishment* of a bishop in America ; by which I have understood you to mean the appointment of a bishop by the authority of the Crown, who should be constantly resident amongst them.

ENGLISH.

ENGLISHMAN.

I certainly did mean so; that *resident* and *permanent* sort of bishop being the only one that has ever been thought of by the sticklers for an American episcopate. As to the itinerant, occasional, bishop you speak of, I know nothing that has hindered their having had such an one for these hundred years past, except the want of zeal, or inclination, in any of the English, or Irish, bishops (notwithstanding all their clamours upon this subject) to undertake so long a voyage and so troublesome a visitation. For, if any one of them had been disposed to engage in so laudable an undertaking, I am persuaded he would easily have obtained a licence from the archbishop of his province, and from the king, as supreme head of the church, (if that be necessary) to be absent from his diocese for two, or three, years on that account. And, I have no doubt, he would have been greatly commended by all true lovers of religion, both in Great-Britain and America, for such an instance of zeal and activity in the exercise of his sacred function: and in
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Such permission as is above-mentioned has never been refused to any bishop.

Such an episcopal visitation of America would probably have had a very good effect.

the latter country I am confident he would have been received with *veneration* by the people of his own church, the Episcopalians of America, as a kind of apostle come amongst them, and with great *civility* and *kindness*, and, even *respect*, by all the other sects of Protestants. For of such a bishop, not fixed and constantly resident amongst them, they would not have had any jealousy.

Of Dr. Berkley's voyage to America in the year 1732.

In the year 1732 Dr. Berkley, a clergyman of the Church of England of great learning and virtue, and who was at that time possessed of the deanery of Londonderry in Ireland, came over to North-America to carry into execution a publick-spirited undertaking which he had projected, and the success of which he had very much at heart; which was the establishment of a college, or university, in the island of Bermuda for the education of the youth of America. He took incredible pains to recommend this design to persons of rank and power both in England and Ireland, and obtained some considerable donations towards the advancement of it; and he quitted his easy situation in

in Ireland, and ventured to cross the sea, in order to set it forward. But he was prevented, by some circumstances which he had not foreseen and could not command, from carrying his project into effect. He spent, however, about two years in North-America, and, for the most part, in New-England; and was received by every body in that country with the greatest civility and respect. And, no doubt, if he had afterwards repeated his visit to America when he was promoted to the bishoprick of Cloyne in Ireland, he would have received a repetition of the same civilities. And, indeed, considering his spirit and activity and his zeal for promoting every measure he thought useful, I have sometimes wondered he did not do so. For he might then have ordained the young American clergy of the Church of England, and confirmed the adults among the laity, and administered all those spiritual comforts to the people of his own persuasion which they and their patrons in England, and, I believe, himself amongst the rest, had so often and so pathetically lamented their being in want of: I say, himself amongst the rest, because,

though

though he was a man of a very candid and liberal temper; and had great charity for all other sects of Christians, he was nevertheless very zealously devoted to the interests of his own church. If he had done so, it is not unlikely that the example of so eminent a person might have been followed by other bishops, and America have been thereby supplied with a succession of the like truly pious visitors; which would have answered all the useful purposes of establishing a resident bishop amongst them, and yet have given no uneasiness to the other Protestants in that country. But perhaps the approach of old age soon after his being made a bishop (for I believe he was fifty five years old when he was promoted to that dignity,) might incline him to the repetition of so long a voyage, and make him resolve to content himself with discharging the duties of his office in his own diocese; which he is said to have done in a very exemplary manner. But this excuse will not hold for all the bishops of England and Ireland; because many of them are made bishops at the age of three or four and forty, and some (that are of noble-

mens

mens families,) soon after the age of thirty. The neglect of such middle-aged and young bishops to make such a visitation in America can be ascribed to nothing but a want of zeal and inclination to the service.

This method of supplying the want of a resident bishop in America by successive visitations of the bishops of England and Ireland seems to me to be the very best method that can be taken for the purpose: inasmuch that I should be glad to see an act of parliament passed that should in some measure impose such a visitation of America upon them as a kind of duty, by making the performance of it a necessary qualification to a translation to a better bishoprick: after which, I have no doubt, there would always be a sufficient number of the junior, or inferiour, bishops, who would be very willing to undertake the voyage.

It is to be wished that even at this day such an episcopal visitation of America as is above-mentioned were to be encouraged by act of parliament.

Such a peregrination into a distant country for the sake of communicating the benefits that result from the Episcopal office to their brethren in America, would reflect honour

Such visitations would do great honour to the bishops who should undertake them.

on the bishops who should undertake it ; and their conduct would then be thought to bear some resemblance to the character of zeal and diligence and philanthropy by which the Apostles were distinguished ; who travelled about from country to country with indefatigable industry, over all the Roman empire, to plant and propagate the religion of their blessed Master.

I do not, however, consider such a visitation of America as being the strict, or absolute, duty of any of the English or Irish bishops ; but am willing to allow that they may do great service to religion, and deserve great commendation, by a faithful and diligent discharge of their episcopal functions in their own proper dioceses. I only think that, so long as they are not impeded by any law of either Great-Britain, Ireland, or America, from making such a progress through the provinces of the latter country and exercising therein the several branches of the episcopal office for the benefit of the people of their own persuasion, they have no pretence for complaining, and ought not in decency

And till the bishops are prevented by some law from undertaking them, no complaint can justly be made that episcopacy is not tolerated in America.

cency to complain, "that the religion of the Church of England is not tolerated there, because its members do not enjoy the advantages that would result from the presence of a bishop amongst them."

In short, *toleration is legal permission*. If any thing necessary to the religion of the Church of England is *not permitted* by law in any province of America, then, and then only, it may be justly said that the Church of England is not completely tolerated in such province. But this, I believe, is not any where the case: and therefore the charge of the aforesaid missionaries of the Society for propagating the gospel and other sticklers for the establishment of a bishop in America, "that the Church of England is not even tolerated without it," is not true. — The instant any act of authority is done in favour of any particular religion by the government of any country, that religion is something *more than tolerated* there; it is in some degree *established*. If therefore the king was to appoint a bishop in any province of America, and give him spiritual jurisdiction over the

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episcopal

would be an *establishment* of it in some degree.

If bishops were to be appointed in America by the king's authority, with however limited a jurisdiction, such a measure would be *more than a toleration* of the Church of England in America; it

episcopal clergy of such province, (which is what I apprehend the sticklers for an American episcopate desire;) he would thereby do *more* than tolerate the Church of England; he would in some degree *establish* it. It may be true indeed that such a degree of establishment of episcopacy in America, by giving the bishop so appointed a spiritual jurisdiction *only* over the episcopal clergy, with an express proviso that he should not attempt to exercise the least power over the protestant ministers of other denominations, or over any of the laity, (which is a proviso that, the advocates for this measure always take care to tell us, makes a part of their moderate plan of American episcopacy,) I say, it may be true that such a degree of establishment of episcopacy in America might not be injurious to the other sects of protestants in America, or inconsistent with the most ample toleration of them. But that is not the subject of our present inquiry. All that I now say is, that (however innocent and inoffensive it may be supposed to be) it would be something *more* than toleration.

We

We have an example of an establishment of the Church of England in a small and imperfect degree in the province of New-York, and also of the inconveniences that have arisen from even such a partial establishment of it. I take the account from Mr. Smith's history of New-York, which I have had frequent occasion to cite to you.

The Church of England is established in some degree in the province of New-York.

Colonel Benjamin Fletcher was appointed governour of the province of New-York by king William, and arrived there in August, 1692. He was a brave and active man, but of strong passions and very zealously attached to the Church of England, which he seemed to have a great ambition to establish in that province.

An account of the said establishment under the government of Col. Fletcher.

As the greatest part of the inhabitants of the province of New-York were of Dutch extraction, the governours of it, both when it belonged to the duke of York and afterwards, had thought it good policy to encourage English preachers and school-masters in the colony, as a likely method of introducing into it, in the course of a few years,
the



the general use of the English language, and an attachment to the English laws and government. But governour Fletcher was still more bent upon this project than any of his predecessors, from his desire of introducing likewise the religion of the Church of England. He, accordingly, recommended this matter to the assembly of the province, upon his arrival in it, and afterwards at another meeting of the assembly in March, 1693. But the house of representatives, from their attachment to the Dutch language (which was their mother-tongue) and to the mode of the protestant religion established in Holland, (to which they had been hitherto chiefly accustomed, and the enjoyment of which had been secured to them by one of the articles of the capitulation granted them upon the conquest of the country,) were very much disinclined to the governour's proposal: which drew upon them a warm rebuke from him at the close of the session of March, 1693, which was expressed in these words. "Gentlemen; the first thing
 "that I did recommend to you at our last
 "meeting was, to provide for a ministry.
 "And

“ And nothing is done in it. There are
 “ none of you but what are big with the
 “ privileges of Englishmen and *Magna*
 “ *Charta*; which is your right. The same
 “ law doth provide for the religion of the
 “ Church of England, and against Sabbath-
 “ breaking and all other profaneness. But,
 “ as you have made this good work your
 “ last business this session, I hope you will
 “ begin with it at the next meeting, and do
 “ somewhat towards it effectually.”

In the September following a new assembly met at New-York, to whom governour Fletcher recommended the same business of establishing ministers in the province in very strong terms, which were as follows. “ I recommended to the former assembly the
 “ settling of an able ministry, that the worship of God might be observed among us :
 “ for I find that great and first duty very
 “ much neglected. Let us not forget that
 “ there is a God that made us, who will
 “ protect us, if we serve him. This has
 “ been always the first thing I have recommended, yet the last in your consideration.
 “ I hope

“ I hope you are all satisfied of the great
 “ necessity and duty that lies upon you to
 “ do this, as you expect his blessing upon
 “ your labours.” The zeal with which this
 affair was recommended, induced the house
 of assembly on the 12th of September, 1693,
 to appoint a committee of eight members to
 agree upon a scheme for settling a ministry
 in each respective precinct throughout the
 province. In a few days a bill was prepared
 for this purpose, by which ministers were to
 be established in several parishes in four
 counties of the province, but without any
 provision for the other counties of it, which,
 I presume, (though Mr. Smith does not
 expressly say so,) were not at that time suffi-
 ciently populous to make such a provision be
 thought necessary. And in the parishes in
 which ministers were to be settled by the bill,
 the right of nomination, or presentation, to
 the said churches was vested by the bill in the
 inhabitants of the said parishes. This was
 not perfectly agreeable to the governour;
 because it gave the ministers who should be
 so nominated, or chosen, by the people, a
 compleat right to take possession of their be-
 nefices

An act of as-
 sembly was
 passed for this
 purpose in
 September,
 1693.

It was not
 quite agree-
 able to the
 governour.

neſices without any interference, or confirmation, of the governor, to which he conceived he had a right by virtue of that clause, in his commission of governor of the province under the great seal of England, which impowered him *to collate any person, or persons, to any churches, chapels, or other ecclesiastical benefices within the said province, as often as any of them should happen to be void.* And in this opinion the council of the province seem to have agreed with him. For they sent the bill back to the house of representatives, in which it had been passed, with an amendment to that effect, by adding to that part of the bill (towards the end of it) which gave the right of presentation to the people, these words, “ *and presented to the governor to be approved and collated.*” But the house of representatives refused to allow of this amendment, and prayed that the bill might pass without the amendment, “they having, (as they said,) in the drawing of the bill, had a due regard to the pious intent of settling a ministry for the benefit of the people.” This refusal very much displeased the governor, who thereupon

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convened

An amendment to the bill is proposed by the council, but rejected by the house of representatives.

The governor is much displeased at this rejection, but nevertheless passes the bill.

convened the assembly before him, and made them an angry speech to the following effect.

His speech to
the assembly.

“ Gentlemen,

“ There is also a bill for settling a ministry in this city and some other countries of the government. In that very thing you have shewn a great deal of stiffness. You take upon you as if you were dictators. I sent down to you an amendment of three or four words in that bill, which, though very immaterial, yet was positively denied. I must tell you it seems very unmannerly. There never was an amendment yet desired by the Council-board but what was rejected. It is the sign of a stubborn, ill, temper. Yet this bill I have also passed.

“ But, gentlemen, I must take leave to tell you that, if you understand that no minister can serve a church without your collation, or establishment, you are greatly mistaken. For I have, by their Majesties letters patent, the power of collating or suspending any minister in my government :

" ment: and, whilst I stay in the govern-
 " ment, I will take care that neither heresy,
 " sedition, schism, nor rebellion, be preached
 " amongst you, nor vice and profaneness
 " encouraged. It is my endeavour to lead
 " a virtuous and pious life amongst you, and
 " to give a good example. I wish you all
 " to do the same. You ought to consider
 " that you have but a third share in the
 " legislative power of the government; and
 " ought not to take *all* upon you, nor be so
 " peremptory. You ought to let the council
 " have a share. They are in the nature of
 " the House of Lords, or upper house: but
 " you seem to take the whole power in your
 " hands, and set up for every thing. &c."

With this speech the governour, after he
 had passed the said bill for establishing mi-
 nisters, with some other bills, prorogued the
 assembly to the 10th of January, 1693-4.
 and soon after dissolved it.

From this account of the manner in which
 this ministry-bill was passed by the governour,
 council, and assembly of New-York, it is easy
 to see that the governour intended that all the

ministers who should be appointed in pursuance of it, should be clergymen of the Church of England. And *that*, probably, was his reason for desiring that the governour of the province should have the *right of approving and collating* (as he expressed it,) the persons who should be chosen by the people of the said several parishes to be their ministers: because by such a power reserved to the governour, it might be supposed that all ministers but those of the Church of England would be for ever excluded from the possession of the benefices established by that act. And it must be confessed that such a power in the governour was agreeable enough to the clause above-mentioned of the commission of governour of the province, concerning the power of collating to benefices; or rather, indeed, that it came short of the power mentioned in that clause. For that clause, probably, meant that the governour of the province for the time being should have (not, simply, the power of approving and confirming those ministers who should be chosen by the people, but) *the absolute choice, or nomination*, of all the ministers of the gospel that were

The view of governour Fletcher in desiring that the aforesaid amendment of the bill should have been passed.

Of the clause in the governour's commission concerning the power of collating to churches.

were to be appointed throughout the province, or, at least, of all those who should be in any degree *established* in the province by the authority of the governing powers of it, and with a legal provision for their maintenance. For *that* is implied by the word *collating*; which is used in the English law for the appointment of a minister to a vacant benefice by the bishop of the diocese, where the right of nomination, or presentation, to the benefice does not belong to any private patron, but to the bishop. This is a different act from *instituting* a clergyman to a benefice; which is considered as an act of a merely spiritual nature, and is always done by the bishop of the diocese, even when the right of presentation to the benefice belongs to a private patron. But *collating* involves in it the *nomination*, or *choice*, of the minister who is to fill the church, as well as the consequent *institution* of him to it. And by the ecclesiastical law of England the bishop of every diocese is the *common*, or *ordinary*, patron of all the benefices in it, or the person who has, in ordinary cases, a right to nominate the clergymen who are to fill them:

and

Of the meaning of the word *collating*, when applied to churches in England.

Its difference from *institution*.

and it is only in particular cases, and by virtue of particular privileges (which are supposed to have been originally obtained by the ancestors, or other predecessors, of those who now enjoy them, as a recompense to them for having liberally endowed the churches to which they relate,) that private persons have a right to nominate, and present to the bishop for institution, the ministers of churches. And, as the bishops in England are the common, or ordinary, patrons of the churches of their respective dioceses, or have the right of *collating* ministers to them, so it seems highly probable that the kings of England, when they granted those commissions to their governours of the provinces of America, with the said clause for *collating* to vacant benefices, meant to reserve to their said governours the full and absolute right of nominating or appointing the ministers of all the churches in those provinces, upon vacancies, without any election of them by the people, or the interference of any other person whatsoever, in imitation of the said right of collating to vacant churches, enjoyed by the bishops of England. For, as to the election of ministers of parishes by the inhabitants, it is a practice
 very

very little known in England; and but few people seem to wish that it were more general.

We ought not therefore to wonder that governour Fletcher was desirous of reserving to himself, and his successors in the government, a right of approving and confirming the ministers who should be chosen by the inhabitants of the several parishes in which ministers were to be established by that act of assembly. But neither ought we, on the other hand, to be surprized that the assembly were unwilling to allow it him. Its being agreeable to the governour's commission was no good reason for their approving it. They were, most of them, Dutchmen, or the sons of Dutchmen, and were used to the Calvinistick and Presbyterian mode of religion, which is established in Holland: and they had hitherto been used to elect their own ministers throughout the province, and to maintain them by voluntary contributions. It was hard upon them, therefore, to be required at once to make a sacrifice of their habits and inclinations in both these points to the governour's partiality to the Church of England; that is, to make settled provisions,

A remark on the reasons of the difference of opinion of governour Fletcher and the assembly of the province of New-York concerning the aforesaid bill.

visions, not depending on their voluntary contributions, for the maintenance of their ministers; and also to put it in the power of the governour to deprive them of the assistance of any but episcopal clergymen, by refusing to approve and confirm the election of any other ministers: and therefore they complied with the governour's wishes in the first point only, of providing a settled maintenance for the ministers, and pertinaciously refused to do so in the second point. And from the governour's passing the bill, notwithstanding the amendment which he had recommended, and which he thought of such importance, had been rejected, it seems probable that he was afraid, if he refused to pass the bill at that time, (imperfect as it was in his opinion,) that he should never be able afterwards to prevail on the assembly to pass any bill at all for the settlement of ministers in the province, or, at least, any bill that came so near his own wishes upon the subject.

But, whatever might be his motive for passing the bill while it continued in his opinion so defective, it is certain that the bill was no sooner passed into a law, but different

constructions

constructions were put upon it by different parties in the province. One party contended that it was made for the sole benefit of episcopal clergymen, and that no others could be chosen ministers of the churches established by it; and another insisted, that the inhabitants of the several parishes in which ministers had been thereby established, might chuse protestant ministers of any other denomination for the ministers of them, as they should think proper. And this latter interpretation was probably the true one, or agreeable to the meaning of the members of the assembly in which that bill had been passed. For in the next assembly, in the month of April, 1695, (which was only about nineteen months after the aforesaid bill passed,) the following resolution was made by the house of assembly, in consequence of a petition presented to it by five church-wardens and vestrymen of the city of New-York, to wit, " That it was the opinion of that house that " the vestrymen and church-wardens have " power to call a dissenting Protestant minister; and that he is to be paid and maintained as the act directs."

Of the different constructions put upon the said ministry-bill, after it was passed.

The next assembly pass an explanatory resolution concerning it, in April, 1695; which is favourable to dissenting Protestant ministers.

Nevertheless the provision made by the said act for Protestant ministers seems to have been enjoyed by Episcopal ministers only.

Notwithstanding this resolution of the house of assembly in favour of protestant ministers dissenting from the Church of England, it seems to have been the practice in the province of New-York to elect none but episcopal clergymen to be the ministers of those parishes that were the objects of governour Fletcher's act of assembly above-mentioned. For Mr. Smith tells us in another part of his book, (Part 2d, Chap. 4th, concerning the religious state of the province,) " that the smallness of the number of the " Episcopalians in the province in comparison of the other inhabitants of it has occasioned a general discontent on account " of the ministry-acts; not so much because " the provision made by those acts is engrossed by the minor sect, as because the " body of the people are desirous of an " equal, universal, toleration of Protestants, " and utterly averse to any kind of ecclesiastical establishment." By this passage it appears that the sect of Episcopalians, or Church-of-England men, has engrossed the provision made for ministers by colonel Fletcher's act of assembly above-mentioned, notwithstanding

notwithstanding the subsequent resolution of the house of assembly in April, 1695. But how this has come to pass, Mr. Smith does not distinctly explain; though it seems to have been owing to a subsequent act of assembly passed in June, 1705, when lord Cornbury, (son to the then earl of Clarendon, and grandson to the first earl of Clarendon, who had been lord chancellor to king Charles the second,) was governour of the province. This governour was still more devoted to the interest of the Church of England, if possible, than even colonel Fletcher: at least he was more violent in his manner of promoting it; for he actually persecuted the Protestants of other sects. In the meeting of the assembly of the province in the said month of June, 1705, this noble lord addressed them in these words.

" The difficulties which some very worthy
 " ministers of the Church of England have
 " met with in getting the maintenance
 " settled upon them by an act of the general assembly of this province passed in the
 " year 1693, moves me to propose to you
 " the passing an act explanatory of the fore-

A conjecture concerning the cause of this sole enjoyment of the said provision by ministers of the Church of England.

Lord Cornbury is made governour of the province of New-York.

His speech to the assembly of the said province, in favour of ministers of the Church of England, in June, 1705.

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mentioned

“ mentioned act ; that those worthy, good,
 “ men, who have ventured to come so far,
 “ for the service of God in his church, and
 “ the good and edification of the people, to
 “ the salvation of their souls, may not for
 “ the future be vexed, as some of them have
 “ been, but may enjoy in quiet that mainte-
 “ nance which was, by a law, provided for
 “ them. I farther recommend to you the
 “ passing of an act to provide for the main-
 “ tenance of some ministers in some of the
 “ towns at the east end of Long Island,
 “ where I don’t find any provision has been
 “ yet made for propagating religion.” In
 consequence of this speech of lord Cornbury
 to the assembly, Mr. Smith informs us that
 an act passed for the benefit of the clergy
 who were intitled to the salaries formerly
 established by colonel Fletcher ; *which, (says*
he,) though less than his lordship recommended,
was, doubtless, a grateful offering to his un-
ceasing zeal for the church. From these
 words of Mr. Smith I conclude that this
 explanatory act of assembly determined that
 the provision for ministers established by the
 former act should be confined to ministers of
 the Church of England.

Another act
 is passed in
 their favour.

You

You see by this account, with how much difficulty colonel Fletcher and lord Cornbury, during their government of this province of New-York, prevailed upon the assembly of it to consent to an establishment of the Church-of-England mode of worship in certain parishes of only four counties of the province, (the whole province at that time being divided into twelve counties,) and how much uneasiness and jealousy even this imperfect establishment of that favourite mode of worship occasioned amongst the other, and more numerous, sects of Protestants: and this in the infancy of the colony, when, from their poverty, ignorance, and weakness, they were afraid of contending with their governours and of provoking the resentment of Great-Britain. You may easily judge, therefore, what disturbances an attempt of the same kind would create now, in the present advanced state of the population of the province, with its attendant circumstances of riches, knowledge, and high spirit. And the same disturbances would most probably be excited there by the measure so much desired by the English missionaries before-mentioned, of establishing a bishop amongst them.

A remark on the effects of the proceedings of governor Fletcher and Lord Cornbury in favour of the Church of England.

FRENCH-

FRENCHMAN.

It seems to me from this account of the proceedings of those two governours of New-York, and the ill humour they occasioned, that the measure we are now considering, " of establishing a bishop there," would be a ready way to cause a rebellion in the province. And therefore the missionaries and others who recommend it, ought to be considered by the government of Great-Britain (if they saw the matter in its true light,) as most dangerous incendiaries.—But, I perceive, by what you have related from Mr. Smith concerning the province of New-York, that colonel Fletcher and lord Cornbury, and the whole Episcopal party there, seem to have acted upon a confident supposition that the Church of England was already legally established in the province (either by the governour's commission, or by some positive statute of England, or by some maxim of the law of England, or upon some other ground that was independent of the laws made by the assembly of the province,) before the above-mentioned ministry-acts, obtained by those

two

Of the opinion that has been entertained by some persons, " that, before the above-mentioned ministry-acts, and independently of the authority of the assembly of New-York, the Church of England was established in the said province."

two governours, were passed. And indeed Mr. Smith, in one of the passages you have cited from him, expressly says that the Episcopalians in the province make such a pretension ; which he himself seems not to think well-grounded. Now it seems strange to me that a matter of this importance should not be settled one way or other, so as not to be a subject of doubt and argument. I therefore beg you would inform me whether the same doubt subsists in the other colonies of America, or whether there is a difference between them in this respect ; and likewise what are the grounds of this opinion of the Episcopalians of New-York.

ENGLISHMAN.

I fain would have avoided entering into this discussion, which will lead us into more length than you are aware of, and retard us in the examination of the main subject of our present inquiry ; which is the history of the steps that have been taken by the missionaries above-mentioned, and other Episcopalians of America, to procure bishops to be established in that country by the authority of Great-Britain, and of the effects which those steps have

have had upon persons of weight and authority in Great-Britain, so as to become a ground of an apprehension in the Americans that such a measure will one day be adopted. But, since your curiosity prompts you to inquire into the other subject first, I will endeavour to satisfy you in the best manner I am able concerning it.

The principal ground of the said opinion.

The opinion which some Episcopalians have entertained, (and which seems to have been that of Colonel Fletcher and Lord Cornbury,) “that the Church of England is lawfully established in America” seems to be grounded chiefly on the following proposition, which is, in general, reasonable enough, but will not hold, if carried to its utmost extent; to wit, “*that when a set of Englishmen depart from England with the king’s permission, and go into a foreign, vacant, country, and take possession of it in the name of the king, and hold it by grants from the Crown, the laws by which they are to be governed in such new country are the laws of England that are in force at the time of their emigration.*” These may in general be said to be the laws
to

to which such colony will be subject *upon their first taking possession of their new country.* To them must afterwards be added, *such laws as they themselves shall make for their own better government by virtue of powers of legislation delegated to them by the Crown by a charter or governour's commission; and such laws, or statutes, as shall be made, in positive and expresse terms, concerning them, after their emigration; by the parliament of England, or Great-Britain, which is the supream legislature of the whole empire.* These are generally allowed to be the three great component parts, or ingredients, which form the bodies of laws that are of force in the colonies.

Of the several component parts of the laws that are of force in the colonies.

There is also a fourth sort of laws that are considered as binding in the colonies, though their foundation seems to be rather arbitrary and precarious. I mean *such statutes of the parliament of England, or Great-Britain, as have been passed after the planting of any colony, and without any intention in the parliament to affect it; but which, having been thought by the judges of the several courts of judicature in the colony to be useful alterations of the former laws, and likely to prove bene-*

Of the English statutes adopted in the American colonies by usage.

ficial to the colony, have been adopted by the said judges in their decisions of the law-suits brought before them, and acquiesced in by the parties affected by them, and generally approved by the people of the colony at large, though without a formal adoption, or admission, of them by the assembly of the colony. This source of colony-law is called *usage*, and is mentioned by that name in an act of parliament of the reign of the late king George the Second. It must therefore be allowed for one origin of the laws that are now in being amongst the colonists of America; though it is matter of just surprize, when we consider the high spirit of liberty by which those colonists are generally animated, that they should ever have permitted their judges to exercise so great a power, and erect themselves into occasional legislators over them. But we may suppose the judges have exercised this power with great wisdom and discretion, and have thereby induced the people to submit to it. However, this fourth source of colony-law is what we shall have no farther occasion to consider in our present inquiry: and therefore I shall say no more about it.

It

It is the first sort of colony-laws that we are principally to attend to, namely, those which are supposed to have been carried out by the first planters of the colony from the mother-country. Now the Episcopalians of America are apt to contend that amongst these original and pre-existing laws are to be comprehended those which relate to ecclesiastical matters; to wit, 1st, The antient law of England for the payment of tythes to the clergy; 2dly, The statute of supremacy in the 1st year of queen Elizabeth's reign, whereby the spiritual jurisdiction of the Pope was abolished throughout all the dominions of the crown of England, and the king, or queen, of England for the time being was declared to be the supreme head of the church; and the statute of uniformity in the same queen's reign, which settled the Liturgy and Articles of Faith of the Church of England; and, in general, all the acts of queen Elizabeth's reign which were passed for the suppression of the Roman-Catholick religion in England, and the establishment of the Protestant religion, according to the mode of the Episcopal Church of England, in its stead;

The argument which has been drawn from the foregoing proposition in favour of the establishment of the Church of England in America.

and 3dly, All the penal laws which were passed in the same reign against those who did not conform to the Church of England then established; many of which related only to Papists, but some to dissenting Protestants. For, say these Episcopalians of America, all these three classes of laws were in force in England at the time of the emigration of the first English settlers in America. This is the best argument that has been produced by the Episcopalians of America to prove that the Church of England is established there. The other arguments they use for this purpose are of very inferior weight. I will therefore defer the consideration of them till I have made the remarks that occur to me upon this first and principal argument.

A remark in answer to the said argument.

Now, in answer to this argument, I must observe, that it is ultimately founded on the presumed choice and inclination of the colonists who have at different times emigrated from England and made settlements in America, and of the kings of England by whose permission they have done so. It is presumed, in the 1st place, that neither these

colonists

colonists themselves, nor the kings of England, by whose permission they emigrated, intended that they should live in a state of anarchy, without any laws at all, in their new plantations, even upon their first arrival there: and it is presumed, in the 2d place, that the laws by which both the colonists themselves and the Crown intended that they should be governed upon their first arrival in their new settlements, were those they had known and been used to in England before their emigration, that is, the laws of England that were in force at the time of their emigration. These presumptions, or conjectures, are the sole foundation of the argument. For it will hardly be contended that, if both the colonists and the king had originally agreed, before their emigration from England, that in their new settlements the payment of tythes to the clergy, and the use of the Liturgy and ceremonies of the Church of England, (though they made a part of the then subsisting laws of England,) should not take place, such a previous agreement would have been void. For, if this were the case, the charters of
 Connecticut

Connecticut and Rhode Island, which were granted by king Charles the 2d in the year 1662, two years after the restoration, for the satisfaction and accommodation of the colonists who had settled there, and who were chiefly dissenters from the Church of England, and which expressly allow the said colonists to forbear the use of the Liturgy and ceremonies of the Church of England, would, with respect to that indulgence, be void and ineffectual: which no body, I believe, has ever yet pretended. It must therefore be admitted that such parts only of the laws of England were originally transplanted to America by the first colonists who settled there, as the said colonists and the kings, by whose permission they emigrated and settled in that country, intended should be so transplanted: and the whole remaining difficulty will be, to discover, what parts of the laws of England, that were in force at the times of the several emigrations of the colonists to America, were intended by the said colonists and kings to be so transplanted, or, rather, what parts of them were intended by them to be excepted from the general transplantation

tion of all the rest; that being the more natural way of stating this inquiry, because we may reasonably suppose that they intended that the general body of the laws of England, without an enumeration of them, should take place in the new plantations, with an exception of some few of them, which they either did not approve or did not think suitable to their new condition [of cultivators of infant settlements. We must therefore inquire, whether there were any parts of the laws of England that were in force at the time of the first settlement of the colonies of America, which, we have reason to think, were not intended by the said colonists, and by the kings of England, by whose permission, and under whose authority, they emigrated and settled in America, to be transplanted to America and become binding upon the said colonists in their new plantations in the same manner as they had been before their emigration from England. Now in answer to this question I think it may be fairly said, that there is great reason to suppose that the obligation to pay tythes to the clergy was one of those parts of the laws of England which

neither

There is reason to suppose that neither the first settlers in America, nor the kings of England under whose authority they settled there,

intended that the laws of England relating to the payment of tythes should take place in the said new settlements.

neither the colonists themselves, who settled the first colonies in any part of America, nor the kings of England under whose authority they settled them, intended to be transplanted with them to America. For some of the first colonists, as, for instance, the Quakers, disapproved of the custom of paying tythes at all to any set of clergy; and great numbers of them were dissenters from the Church of England, and consequently must have been unwilling to pay tythes in their new plantations to a set of Church-of-England clergymen, though they had been forced to do so in Old England; and all of them, the Church-of-England men as well as the rest, seem to have thought the payment of tythes to the clergy too great a burthen for a new colony to bear at its first settlement. For none of the colonies, as I believe, have ever paid them immediately upon their first establishment, and by virtue of the antient law of England; nor indeed even at this day: though some of those in which the bulk of the people are members of the Church of England, (as Virginia, Maryland and South Carolina,) have established, by acts of their assemblies,

assemblies, some other legal payments for the episcopal ministers of their parishes. It appears therefore not to have been the intention of the first settlers of the several colonies of America to transplant with them that part of the law of England which required them to pay tythes to the clergy.

Nor can it reasonably be supposed that the kings of England by whose permission the first colonists of America, emigrated from England, had an intention that those colonists should pay tythes to the clergy in their new settlements as soon as they had made them; though perhaps they might wish that either *that*, or some other sufficient, provision might be made for the maintenance of an episcopal ministry in the colonies, when the people should be better able to afford it. But, I say, they did not expect, or intend, that, *immediately upon the arrival of the colonists in their respective new plantations*, the clergy should be intitled to a tenth part of the yearly produce of their new lands, as the clergy of England are to the like part of the produce of the lands of England. For,

if they had had such an intention, they would have directed their governours of the said provinces to insert in all the grants of land which they made to the new settlers in the king's name, (all the lands of America being, as you know, holden by virtue of grants from the Crown;) a clause that should expressly reserve to the clergy such a portion of the future produce of the lands thereby granted; and they would also at the same time have caused the said new-granted lands to be divided into districts, or parishes, and have appointed episcopal clergymen of the Church of England to be the ministers of them. But none of these things were ever attempted to be done. And therefore we must suppose that the kings of England, by whose permission the first colonists settled in America, had no intention that the law of England relating to the payment of tythes to the clergy should be immediately transplanted to America together with the other laws of England then in being, which were more necessary to the preservation of peace and good order amongst them,

And

And consequently, since neither the first colonists themselves, nor the kings of England, by whose permission they emigrated from England and made settlements in America upon lands granted them by the Crown, intended that the law of England concerning the payment of tythes to the clergy should be immediately transplanted to America, we may justly conclude that it was not so transplanted, or that it never was binding in America by virtue of the mere settlement of the English colonists in that country, and without some subsequent act of authority to introduce it there.

Consequently the law of England for the payment of tythes was not carried over to America by the first settlers there upon their emigration from England.

And in this respect the English colonists in America, and the kings of England by whose permission they settled in America, seem to have thought and acted in pretty much the same manner as the French colonists who settled in Canada, and the kings of France by whose permission they settled there. For these latter persons did not consider the law of France, which directs the payment of tythes to the clergy, as having been transplanted into Canada upon the first settling of

Nor was the law of France concerning tythes carried over to Canada by the first French settlers there upon their emigration from France.

it by the French colonists, notwithstanding the great body of the laws of France that prevail at Paris and in the district belonging to it, and which are known by the name of *the custom of Paris*, was expressly introduced into Canada by the edicts of the kings of France and their grants of the lands contained in it. For the first colonists of Canada were not obliged by law (as you well know,) to pay any part of the produce of their plantations to the clergy for a long series of years; and even now they do not pay the tenth part, (as the inhabitants of the district of Paris in Old France do,) but only the 26th bushell of their corn; which they thresh out for their respective curates, and put up for them in their granaries. And this matter has been settled intirely by positive edicts of king Lewis the 14th, without any reference to, or supposed operation of, the law that prevailed in the district of Paris in Old France upon the same subject. For in the year 1663 that celebrated king published an edict by which he ordained that his subjects in Canada should pay the thirteenth (not the tenth) sheaf of all the corn that grow upon their land,

The tythe in Canada was established by an edict of king Lewis the 14th in the year 1663.

It was then fixed at the rate of the 13th part of the vegetable produce of the land.

land, and the like part of all their other vegetable produce, to the directors of the seminary of Quebec, to be by them distributed in portions, or salaries, to the priests whom the bishop should send into the several parishes of the colony to discharge the duties of parish-priests there; no constant, or peculiar, curates having at that time been established in the said parishes. And upon a complaint and remonstrance made by the inhabitants, or settlers, of Canada to the superiour council of the province, that the payment of a thirteenth part of their produce to the clergy was too heavy a burthen for their infant and ill-cultivated settlements to bear, the said payment was, by the authority of the said superiour council, reduced to one half of its former quantity, until the king's pleasure should be known upon the subject; but with an additional obligation on the land-holders by whom the said payment was to be made, to thresh out the said corn so that it should be fit to put up in the granary. This reduction of the tythe from the 13th sheaf of corn to the 26th bushell by the superiour council of Quebec was made in the year 1667, and was immediately carried into execution.

In the year 1667 it was reduced, by a provincial ordinance, to the 26th bushell of corn, threshed out for the use of the priest.

Some

to it. At last the curates appealed from the decision of the said superiour council to the French king's council of state; which, on the 12th of July, 1707, gave a final judgement against them, that intirely overturned their pretensions, and took away all their hopes of succeeding in them at any other time.

Besides the 7600 French livres a year, which the French king granted out of his revenue for the augmentation of small livings in Canada, he granted another sum of 2000 livres a year for the benefit of such curates of parishes as should be rendered incapable of performing the duties of their office in their respective parishes by old age or infirmity. And these 2000 livres were to be divided into seven parts, of which six were to be of 300 livres each, and the seventh of 200 livres.

And afterwards the king of France granted another sum of 1350 livres *per annum* for the same purpose of maintaining old and infirm curates; and another of the same amount, for the building of new parish-churches. And all these sums were at the disposal of the bishop of Québec.

It

It is plain therefore that neither the French colonists in Canada nor the kings of France, by whose permission they settled there, understood the law of tythes to have been transplanted from France into Canada, either by the mere act of emigration of the settlers from the former country to the latter, or by the edicts of the kings of France which introduced the custom of Paris into the latter country as the general basis, or foundation, of its laws. Much less therefore ought it to be supposed that the first planters of the English colonies in America, (many of whom were dissenters from the Church of England,) meant to carry with them that part of the laws of England which requires the occupiers of land to pay tythes to an Episcopal ministry.

Conclusion, that the French law of tythes was not transplanted from France into Canada by the emigration of the first settlers of the latter country.

The same conclusion concerning the English law of tythes.

For nearly the same reasons we may conclude that it was not the intention of the first English settlers of America to carry over with them into their new settlements the statute of Uniformity passed in the reign of queen Elizabeth for establishing the Liturgy and Ceremonies and Articles of Faith of the Church of England, and, still less, the penal

The same conclusion extended to the English statutes for establishing the Church of England, and punishing dissenters from it.

laws which were passed in the same reign against Protestant dissenters from the same : since many of those first settlers came themselves under that denomination. As to the statute of Supremacy indeed, which was passed in the 1st year of queen Elizabeth, that certainly does extend to America, as well as to all the other dominions of the crown of England, because there are express words in it which carry it to that extent, it being thereby enacted that the Pope's authority and jurisdiction shall be for ever abolished and excluded, not only in the dominions that were at that time in the possession of the Crown of England, but in those that thereafter should belong to it. But no such extending words are inserted in the act of Uniformity in queen Elizabeth's reign, nor in the penal acts above-mentioned of the same reign which relate to Protestant dissenters. Those acts therefore do not by their own immediate import and operation extend to the colonies of America : and, for the reason already mentioned, it is not probable that the first settlers of those colonies meant to carry them with them into their new settlements when they

they emigrated from England. We may therefore conclude that the Church of England was not established in the American colonies by the mere emigration of the first settlers of them from England. And thus we are rid of the first and best argument of the Episcopalians in support of the opinion "that the Church of England is at this day established in those colonies, or at least in the colony of New-York, independently of the acts of its assembly." I now proceed to consider the other arguments that have been alledged in support of that opinion, which, as I before observed, are very inferior to the foregoing argument in weight and plausibility.

A second reason that has been alledged in support of the above-mentioned opinion of the Episcopalians of New-York, "that the Church of England is established in that province independently of the acts of their assembly that have been passed in favour of it," is drawn from an act of the English parliament for securing the Church of England as by law established, which was recited and confirmed in the act which established the

The second argument that has been used by Episcopalian writers in support of their doctrine, that the Church of England is established in America.

The occasion of providing for the security of the Church of England in the treaty of union between the two kingdoms of England and Scotland in the year 1707.

treaty of union between England and Scotland in the year 1707. The occasion of passing this act was as follows. The parliament of Scotland were apprehensive that, when the union of the two kingdoms should take place, and the two parliaments of England and Scotland should be swallowed up in the parliament of the united kingdom of Great-Britain, the English part of the said parliament, (which would greatly out-number the Scottish members, and would consist of members of the Episcopal Church of England,) might take some opportunity of getting an act of parliament passed for over-turning the Presbyterian mode of church-government and publick service that was then established in Scotland, and introducing bishops and the use of the English Liturgy in their stead. This apprehension was by no means ill-founded; since their country had twice been rendered a scene of confusion and misery by the like attempts in the reigns of king Charles the first and king Charles the second; the former of whom attempted, in the year 1637, to force upon them the use of a publick Liturgy (to which they were averse,) and thereby

thereby gave occasion to those tumults and insurrections among them, which ultimately brought on the civil war in England, which ended in the death of the king and the change of the government of England; and the latter, (after Episcopacy had been formally and solemnly abolished by king Charles the first and the Scottish parliament in the year 1641, in compliance with the general inclination of the people,) again introduced Episcopacy amongst them, and persecuted the Presbyterians that refused to submit to that establishment. The memory of these misfortunes and oppressions made the parliament of Scotland afraid of the like attempts on some future occasion, after the two kingdoms should be united, if particular care were not taken to guard against them: and therefore they passed an act of parliament, previous to the treaty of Union, to establish the Presbyterian mode of church-government within the kingdom of Scotland to all future times, and made the act so passed an essential and fundamental article of the union between the two kingdoms, that should never be repealed, or altered, by any subsequent parliament of the

the united kingdom of Great-Britain. The zealous friends to episcopal government in England took occasion from this act of the Scottish parliament to procure a like precautionary act to be passed by the English parliament for the perpetual continuance of episcopal government in England ; though, from the great majority of the English members in both houses of parliament, there seemed to be little reason to apprehend that any attempt to the prejudice of the Church of England could be the consequence of the said union. Such an act was, however, passed by the English parliament, and made an article of the treaty of union between the two kingdoms. It was intituled, “ *An act for securing the Church of England as by law established.*” And it enacts, “ That the act of the 13th “ of queen Elizabeth, and the act of Uni- “ formity passed in the 13th year of king “ Charles the second, and all and singular “ other acts of parliament then in force for “ the establishment and preservation of the “ Church of England, should remain in full “ force for ever ; and that every succeeding “ sovereign should, at his coronation, take „ and

The words of the English act of parliament passed at that time for the security of the Church of England.

" and subscribe an oath to maintain and pre-
 " serve inviolably the said settlement of the
 " Church of England, as by law established,
 " within the kingdoms of England and Ire-
 " land, the dominion of Wales, and town
 " of Berwick upon Tweed, and the terri-
 " tories thereunto belonging." Now from
 these last words, "*and the territories there-
 unto belonging,*" some persons have inferred
 that the English parliament meant by that
 act to establish the Church of England in all
 the out-lying, distant, dominions then belong-
 ing to the Crown of England, and conse-
 quently, in the English colonies in America,
 as well as in England, Ireland, and Wales,
 and the town of Berwick upon Tweed; all
 the said dominions being, they say, compre-
 hended under the said expression of *the ter-
 ritories thereunto belonging.*

Argument of
the Episcopa-
lians derived
from those
words.

FRENCHMAN.

This seems to be a strange conclusion to
 draw from this proceeding of the English
 parliament; as it seems highly probable that
 the whole view of the parliament in making
 that precautionary act was to preserve the
 Church

A remark on
the said ar-
gument.

Church of England from being overturned or altered in those parts of the English dominions in which it was then established, and not to establish it in other parts of them. The attention of the English parliament must at that time have been intirely taken up with the great object then before them, the union of the two kingdoms of England and Scotland, and with the means of preventing such ill consequences as might be thought likely by some members to follow from it. It ought not therefore to be imagined that they meant at the same time in an occasional and collateral manner, and by those three or four general words of *the territories thereto belonging*, to make such important innovations in the government of other parts of the English dominions as that of establishing the Church of England, with its Liturgy, ceremonies, articles of faith, and payment of tythes, in them, when they had not been established there before. And I wonder that any man can ever have entertained so absurd and ridiculous a notion.

ENGLISH.

ENGLISHMAN.

I think this conclusion as absurd as you can do: and therefore I should not have troubled you with the mention of it, if I had not seen it advanced by a writer of respectable abilities. But Dr. William Douglas, (from whose instructive summary of the state of the British settlements in America I have already cited you some passages,) does in that book deliver it as his opinion that the Church of England is established in the American colonies by the above-mentioned clause in the said English act. of parliament, which, after mentioning England and Ireland, and Wales, and the town of Berwick upon Tweed, contains the general words, "*and the territories thereunto belonging.*" In a note marked / in his second volume, page 121, he expresses himself in these words. "*Before the union of the two kingdoms of Great-Britain in the year 1707, the ecclesiastical constitution of the English American plantations was (Roman-Catholics excepted,) a general toleration of all Christian professions without any preference. In the treaty*

The aforesaid second argument of the Episcopalians was adopted by Dr. Douglas of Boston.

The words used by him on this subject.

“ for this union, it was naturally agreed by
 “ the commissioners, and afterwards confirmed
 “ in perpetuity by acts of both parliaments,
 “ That the Church of England was to be
 “ deemed the established church, with the esta-
 “ blished toleration, in all the formerly Eng-
 “ lish colonies,” by this expression, “ and ter-
 “ ritories thereto (to England) belonging.” —
 “ In the strict act of Uniformity, in the 14th
 “ of Charles the 2d, there is no addition of
 “ the words, “ territories thereto belonging,”
 “ though the islands of Jersey and Guernsey
 “ (which the reverend Mr. Hobart thinks are
 “ meant by those words in the act passed at the
 “ Union) belonged to England at that time as
 “ well as at the time of the Union.” These
 are the words in which Dr. Douglas has
 expressed this odd opinion. But he seems
 not to have considered very carefully what he
 meant by it. For, notwithstanding he here
 affirms that the Church of England was esta-
 blished in the American colonies by the said
 English act of parliament of 1707, he no
 where supposes that by virtue of the said act
 the ministers of the Church of England are
 become intitled to demand the payment of
 tythes

The said
 words seem
 not to have
 been well
 considered by
 him.

tythes from the people of their respective parishes, or that the acts of the assemblies of the provinces of Massachusetts Bay and Connecticut by which a legal maintenance is provided for the *Congregationalist*, or *Independant*, ministers, are rendered null and void by the said English act of parliament, and the payment of tythes to Episcopal ministers substituted in their stead; which would be the necessary consequences of the establishment of the Church of England in those provinces. He therefore seems not to have *really* entertained the opinion that he has advanced concerning the establishment of the Church of England in America by the said act of parliament, but to have deceived and puzzled himself (as many other persons have done on the like occasions) by not considering the meaning of the word *establishment*, or the extent of the proposition he too hastily advanced. I therefore consider this writer as having been in truth of a contrary opinion to that which he has advanced in the foregoing passage of his book concerning the establishment of the Church of England in America by the said act of parliament. But,

whether he was or no, I must continue to think that opinion wholly destitute of foundation. As to that expression in the said act, *of the territories thereunto belonging*, it must be supposed to relate to the islands of Jersey and Guernsey and the Isle of Man, and the other little islands on the coast of England, and the other dependent dominions of the Crown of England in which the Church of England was already established, (as the said reverend Mr. Hobart understood it,) but not to the English colonies in America, in which the said establishment had not taken place.

This Mr. Hobart has treated this subject with so much ability in a pamphlet he published about twenty years ago, intitled *A second Address to the Episcopal Separation in New-England*, that I am persuaded you will be glad to hear an extract from it. Amongst other arguments of weight he has the following passage. “ *The title of the act is*

“ *exactly agreeable to what we have said of*
 “ *the design of it, and of the temper of the*
 “ *parliament that passed it. It is intitled,*

“ *An*

A judicious
 passage from
 a pamphlet of
 the Rev. Mr.
 Hobart, of
 Connecticut,
 upon this sub-
 ject.

“ *An act (not for enlarging, but) for secur-*
 “ *ing the Church of England,” and that not*
 “ *in the American plantations, but as it is*
 “ *now by law established; which plainly means*
 “ *no more than to perpetuate it within its*
 “ *ancient boundaries.*

“ *The provision made in the act itself is*
 “ *well adapted to this design; for it enacts,*
 “ *That the act of the 13th of Elizabeth, and*
 “ *the act of Uniformity, passed in the 13th*
 “ *year of Charles the 2d, and all and singular*
 “ *other acts of parliament then in force for*
 “ *the establishment and preservation of the*
 “ *Church of England, should remain in full*
 “ *force for ever; and that every succeeding*
 “ *sovereign should, at his coronation, take and*
 “ *subscribe an oath to maintain and preserve*
 “ *inviolably the said settlement of the Church*
 “ *of England, as by law established, within*
 “ *the kingdoms of England and Ireland, the*
 “ *dominion of Wales, and town of Berwick*
 “ *upon Tweed, and the territories thereunto*
 “ *belonging. This act doth not use such ex-*
 “ *pressions, as would have been proper, and*
 “ *even necessary, had the design been to have*
 “ *made*

“ made a new establishment ; but only such as
 “ are proper to ratify and confirm an old one.
 “ The settlement, which the king is sworn to
 “ preserve, is represented as existing previously
 “ to the passing this act, and not as made by it.
 “ The words of the oath are, to maintain
 “ and preserve inviolably the said settlement.
 “ If it be asked, What settlement ? The answer
 “ must be, a settlement heretofore made and
 “ confirmed by certain statutes, which, for the
 “ greater certainty and security, are enume-
 “ rated in this act, and declared to be unalter-
 “ able. This is the settlement the king is sworn
 “ to preserve, and this settlement has no rela-
 “ tion to us in America. For the act, which
 “ originally made it, did not reach hither ;
 “ and this act, which perpetuates them, does
 “ not extend them to us.”

Another pas-
 sage from the
 same pamph-
 let,

And in another passage he says, “ These
 “ countries [the American plantations] are
 “ usually, in law, as well as in other, writings,
 “ styled colonies or plantations, and not terri-
 “ tories. The islands of Guernsey and Jersey
 “ were properly territories belonging to the
 “ kingdom of England before the Union took
 “ place :

" place: and they stand in the same relation
 " to the kingdom of Great-Britain. Since.
 " The Church of England was established in
 " these islands; and the legislature intended to
 " perpetuate it in them, as well as in England
 " itself; so that, as these islands were not par-
 " ticularly named in the act, there was occa-
 " sion to use the word, Territories, even upon
 " the supposition that they did not design to
 " make the establishment more extensive than it
 " was before this law passed." These passages
 of Mr. Hobart seem to me to be unanswerable.

This Mr. Hobart was a Congregationalist
 minister of one of the churches at Fairfield
 in Connecticut; which made him apprehensive
 that his opinion and arguments might be attributed
 by the advocates for the contrary opinion to party-spirit.
 He therefore endeavoured to remove this prejudice
 by shewing that his opinion on this subject was agreeable
 to that of some eminent bishops of the Church of
 England, who were known to be zealous supporters
 of their own establishment. He cites on this occasion
 the opinions of two such bishops, Dr. Bisse,
 bishop

bishop of Hereford, and the very learned Dr. Gibson, bishop of London, who published the well-known compilation of the ecclesiastical laws of England, called the *Codex Juris Ecclesiastici Anglicani*. The passage in which Mr. Hobart mentions these opinions is as follows. “ *Dr. Bisse, bishop of Hereford, a member of the Society [for propagating the gospel] preached the annual sermon Feb. 21, 1717, ten years after the act of Union took place; and he says, it would have well become the wisdom where- with that great work (the reformation, or establishment of the Church of England) was conducted in this kingdom, that this foreign enterprize (the settlement of plantations in America) also should have been carried on by the government in the like regular way. But he owns the government at home did not interpose in the case, or establish any form of religion for us. In truth (says his Lordship) the whole was left to the wisdom of the first proprietors, and to the conduct of every private man. He observes, that of late years the civil interest hath been regarded, and the dependance of* “ *the*

The opinion of Dr. Bisse, bishop of Hereford, in the year 1717, “ that the Church of England had not been established in America.”

“ the colonies, on the imperial Crown of the
 “ realm, secured: but then, with regard to
 “ the religion of the plantations, his Lordship
 “ acknowledges, that the government itself here
 “ at home, (sovereign as it is, and invested,
 “ doubtless, with sufficient authority there,) hath
 “ not thought fit to interpose in this matter,
 “ otherwise than in this charitable way: it
 “ hath enabled us to ask the benevolence of all
 “ good Christians towards the support of mis-
 “ sionaries to be sent among them. Thus bishop
 “ Bisse thought as I do, and that neither the
 “ act of Union, nor any other law prior there-
 “ to, did extend the establishment to the plant-
 “ ations; and, if the society had not been of
 “ the same opinion, they would hardly have
 “ printed and dispersed his sermon. Neither
 “ did the civil rulers of the nation, (who may
 “ justly be supposed acquainted with its laws,)
 “ think that the act of Union, or any other
 “ law, established the Church of England in
 “ America. This is plain from the letter of
 “ the Lords Justices to Governour Dummer,
 “ in the year 1725, almost twenty years after
 “ the Union, wherein they say, “ there is no

The opinion
 of the lords
 justices of
 England in
 the year 1725
 to the same
 purpose.

“ regular establishment of any national or provincial church in these plantations.”

“ If it be urged, that the King’s commission to the late bishop of London proves an ecclesiastical establishment here, it is sufficient to answer, that his Lordship was remarkable for skill in the laws, so far as they relate to ecclesiastical affairs, as appears from his Codex; and he was of the contrary opinion: for in his letter to Dr. Colman, of May 14, 1735, he writes thus:

The opinion of Dr. Gibson, bishop of London, to the same purpose.

“ My opinion has always been, that the religious state of New-England is founded in an equal liberty to all Protestants; none of which can claim the name of a national establishment, or any kind of superiority over the rest.” This opinion the bishop gave not only since the act of Union, but even seven years after he had received his commission; and surely it must be admitted, that as he had time enough to consider it, so he, of all others, best understood it.”

After these authorities I think we may safely conclude that the notion advanced by Dr. Douglas “ that the Church of England was

was established in America by the act of Union of the two kingdoms of England and Scotland" is a mere fantastick opinion, that has no manner of foundation in fact or reason.

FRENCHMAN.

I think so likewise, and without the least hesitation; and am almost sorry you have taken so much pains to refute so ill-grounded an opinion.—But, pray, do the advocates for Episcopacy in America bring any other arguments, besides these two which we have considered, in support of their assertion, that the Church of England is established in the American colonies, and particularly in the province of New-York, independently of the acts of their respective assemblies?

Of the other arguments of the Episcopalians of America in support of their position concerning the establishment of the Church of England in the said colonies.

ENGLISHMAN.

They have upon some occasions brought two other arguments in support of this opinion: but these arguments are so very weak and trifling that, I believe, they do not in general much insist upon them. The first of them is grounded on the king's private

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instruc-

A third argument of the said Episcopalians in favour of the said position.

Of the king's authority as the supreme head of the Church.

Of the king's instructions to his governours of the colonies in favour of the Church of England.

instructions to his governours of the American provinces relating to religion. The king, say they, is, according to the law of England, the supreme head of the church : and therefore he has a power to make laws relating to religion by his own single authority. And he has exercised this authority with respect to his American colonies by his instructions to his governours upon this subject: one of which directs the governours to prevent any ministers from preaching in their respective provinces without their licences; and another commands them to take especial care that divine service be performed throughout their governments according to the rites of the Church of England; and a third commands them to give all countenance and encouragement to the exercise of the lord bishop of London's spiritual authority; and a fourth commands them not to prefer any ministers to any ecclesiastical benefices within their governments without certificates from the lord bishop of London of their being conformable to the doctrine and discipline of the Church of England and of good life and conversation. By these instructions therefore,

therefore, say they, the Church of England is established in the American colonies, to the exclusion of all other modes of religion, by the king's authority as supreme head of the Church of England. This, if I understand it right, is the first of the said two latter arguments brought by the Episcopalians of New-York in support of their favourite doctrine. But it is full of defects, as, I believe, I shall soon convince you.

For, in the first place, though it be true that the king is, by the laws of England, the supreme head of the church, and the statute that makes him so, (namely, the statute of the first year of queen Elizabeth for abolishing the authority of the Pope and all foreign jurisdiction in matters ecclesiastical and spiritual,) extends by express words to all the future dominions of the Crown of England, and consequently to the American colonies, as well as to the dominions at that time in its possession, yet the king is not empowered, by virtue of this supremacy in matters spiritual, to make laws concerning religion by his own single authority: but he must

A remark on the said third argument.

Of the power of making ecclesiastical laws in England.

must act in this business in conjunction with his parliament, if the laws he means to enact are to bind his lay-subjects; and in conjunction with the convocation, (or assembly of the bishops and representatives of the clergy of England,) at least, (if not with the parliament also) if they are to bind the clergy only. This I take to be clear law. Therefore the king cannot by his single authority make laws concerning religion in his American colonies, any more than he can make laws there concerning any other subject.

Another remark on the said argument.

But, in the second place, if the king could make laws in America concerning religion, he could only make them by his publick letters patent under the great seal of England, or Great-Britain, and not by his private and unpublished instructions under his signet and sign-manual; as we have already agreed in a former part of this conversation. Therefore, if the king had had the said legislative power upon the subject of religion, and had given his governours the most express and precise orders by instructions under his signet and sign-manual to establish the Church of England

land in their respective provinces, to the utter exclusion of every other mode of the Protestant religion, such an attempt to establish the said church would have been wholly illegal and void.

But, lastly, the king's instructions to his American governors do not purport to establish the Church of England in those provinces to the exclusion of the other modes of the Protestant religion, though they seem intended to give it a superiour degree of countenance and encouragement. At least we may affirm this of the instructions to the governor of Georgia, which I have above recited to you. For, as to those of the governor of New-York, I have not seen them, and consequently cannot speak to them. But I believe they are nearly, if not exactly, the same with those of the governor of Georgia. Now, if we examine these latter instructions, we shall find that there is no such instruction as that which is first mentioned in the foregoing argument of the Episcopalians, to wit, an instruction directing the governor to prevent any minister from preaching in the province

A third remark on the said argument.

Of the true intent and meaning of the king's instructions above-mentioned in favour of the Church of England.

province without his licence ; which is the strongest of the three supposed instructions, upon which that argument is founded, in favour of such exclusive establishment. But the instruction which comes nearest to doing this, and seems to have been perverted and misrepresented for the purpose of drawing from it the favourite doctrine of the exclusive establishment of the Church of England in America, is the 80th instruction ; which I have before recited to you, and which is in these words. “ *You are to inquire whether there be any minister within your government who preaches and administers the sacraments in any orthodox church, or chapel, without being in due orders ; and to give an account thereof to the said lord bishop of London.*” This instruction, you see, relates only to *orthodox* churches and chapels, that is, to churches and chapels that belong to persons of the religion of the Church of England. In these no ministers are, by this instruction, to be permitted to officiate, by preaching or administering the sacraments, without having received episcopal ordination. This is only a reasonable precaution to preserve those congregations

The king's
80th instruction to his
governours.

gregations in the province which are already of the Episcopal persuasion, or Church of England, from having any ministers put upon them that are not ordained and qualified to officiate amongst them in the manner which they, the members of such orthodox, or episcopal, churches, think necessary. But it does not forbid the preaching of Presbyterian, or other protestant, ministers, not episcopally ordained, to Presbyterian, or other protestant, congregations; which is, indeed, expressly permitted by another of the king's instructions, to wit, the 75th, which is in these words, "*You are to permit a liberty of conscience to all persons, except papists; so they be contented with a quiet and peaceable enjoyment of the same, not giving offence or scandal to the government.*" By this expression of *liberty of conscience*, I presume, we must understand a liberty to Protestants, who dissent from the Church of England, to meet together in proper places for the purpose of worshipping the Supreme Being in the manner they most approve. For, if it only means a liberty of thinking as they please upon religious subjects, without

The king's 75th instruction to his governour in favour of toleration for all persons, except papists.

meeting together for the purpose of divine worship, it is a liberty which they cannot be deprived of under any government, however severe and arbitrary, but which they might enjoy in Spain or Portugal as well as Georgia, notwithstanding the Inquisition, and which cannot but be allowed even to the papists of the province, who yet are excepted in the said instruction from the number of those to whom the said liberty of conscience is to be granted. It appears therefore by this 75th instruction that the liberty of meeting together for the purpose of divine worship is intended to be granted to all Protestants in the province as well as to those of the Church of England; and consequently the Church of England is not intended to be established by these instructions in the said province to the exclusion of all the other protestant modes of worship, as has been sometimes contended by the Episcopalians of New-York.

Of the other instructions above-mentioned in favour of the Church of England.

It does indeed seem to have been the intention of the king in the other instructions alluded to in the aforesaid argument of the Episcopalians, to procure the Church of England

England to be established throughout the whole province; so as to have divine service performed according to the liturgy and ceremonies of that church in all the parishes of it, though the Protestant dissenters from it were to be permitted at the same time, by virtue of the 75th article, to assemble in other meeting-houses to worship God in their own manner: I say, it seems to have been the intention of the kings of England *to procure the Church of England to be so established*, but not immediately to establish it in that manner by their own single authority exerted by the said instructions. This distinction may, perhaps, appear too refined: but I think there is good reason for adopting it. For, if the king had meant to establish the Church of England in the province himself by his own immediate authority, he would probably have done it by his proclamation, or letters patent under the great seal, as he imposed the duty of four and a half per cent. upon goods exported from the island of Granada; or, if he had been persuaded by his ministers to think an instruction under his signet and sign-manual sufficient for this purpose, he

The king's intention in giving the said instructions to his governours.

The king did not intend by them to establish the Church of England in the American colonies immediately by his own single authority.

would at least have ordered such instruction to be made publick, to the end that his subjects in the said province might have known his royal pleasure and have paid obedience to it. But he has done neither of these things: and consequently we must suppose that he did not intend immediately to establish the Church of England throughout the province by his own authority exerted by the said instructions, but only to command his governour to use the powers delegated to him by his commission under the great seal, together with the influence his high station would give him in the province, to bring about such an establishment, that is, to endeavour to procure the Church of England to be so established in the province by acts of the provincial legislature. For, as I cannot imagine, for the reasons just now mentioned, that the king meant by the said instructions instantaneously to establish the Church of England in the province by his own immediate authority, so neither can I suppose that he meant to command his governour to make such establishment by his (the governour's) own single authority, or without the concurrence

Nor to command his governours to establish it by their single authority.

rence of the assembly of the province. For, if he had meant to give him such a command, he would surely have given him a proper power to do so by a clause in his commission of governour delegating to him his spiritual, or ecclesiastical, authority as supream head of the church, and empowering him, by virtue of it, to make laws relating to religion; as, for instance, for the building and repairing churches; assigning glebe, or paying tythes, or both, for the maintenance of parish-priests; enjoining the use of the Liturgy and ceremonies of the Church of England in all the parish-churches of the province; and the like: after which delegation of so high a legislative power to the governour, it would have been rational and consistent in the king to command him to make use of the said power for the purposes specified in the said instructions. But, as no such power is delegated to the governour by his commission;—and no mention is made in it of the king's being himself possessed of such a power of making laws concerning religion by his own single authority, as being supream head of the church;—but the only legislative authority

authority therein pretended to be delegated to the governour is an authority to make laws, statutes, and ordinances for the peace, welfare, and good government of the province, by and with the advice and consent of the council and assembly of the province;— it seems reasonable to conclude that the king could not mean, by his instructions aforesaid in favour of the Church of England, to command his governour to do the acts of legislation therein mentioned by his own single authority, but only to endeavour to procure them to be done by acts of the legislature of the province.

but only to endeavour to procure it to be established by acts of their provincial assemblies.

An argument derived from the 83d instruction in support of the foregoing construction of the other instructions in favour of the Church of England.

And that this is the true meaning and design of the said instructions in favour of the establishment of the Church of England in the province, will appear also from considering the 83d instruction concerning the degrees of consanguinity and affinity within which marriages are to be unlawful; which is in these words. “ *And you are to take*
 “ *especial care, that a table of the marriages*
 “ *established [one would think it ought ra-*
 “ *ther to have been, prohibited] by the canons*
 “ *of*

*" of the Church of England be hung up in
 " every orthodox church, and duly observed.
 " And you are to endeavour to get a law passed
 " in the assembly of that colony (if not already
 " done,) for the strict observation of the said
 " table."* Here we see that the king, intending that the laws that are in force in England concerning the degrees of consanguinity and affinity within which marriages should be unlawful, should take place in his colony of Georgia, directs his governour to endeavour to procure a law to be passed in the assembly of the province for that purpose. We must therefore suppose that he meant to command him to proceed in the same regular and legal manner for the establishment of the other branches of the religion of the Church of England mentioned in the said other instructions.

But, if, notwithstanding all that has been said, the said other instructions concerning the establishment of the Church of England in the said province were really meant as an immediate act of a legislative authority in the Crown for establishing the Church of England

If the afore-said construction of the king's said instructions to his governours is not the true one, the said instructions are illegal and void.

Two reasons
why they are
so.

land in the said province, (as is supposed in the aforesaid argument of the Episcopalians of New-York,) I must recur to what I have already observed concerning them, to wit, that they must be absolutely illegal and void for two reasons; to wit, in the 1st place, because the king of Great-Britain has no such power of making laws concerning religion by his own single authority, as being the supreme head of the church; and in the second place, because, if he had such a legislative authority, he could not legally exercise it by instructions under his signet and sign-manual, nor by any other instrument but his letters patent under the great seal of Great-Britain.

The instructions in favour of the Church of England, alluded to in the aforesaid argument of the Episcopalians of New-York, are the 80th, (which I have lately recited to you) and the 76th, 81st, and 78th; to which we might add the 77th, 79th, and 82d, which I recited to you some time ago, when we entered upon the subject of establishing bishops in America.

This

This is all that occurs to me at present concerning this third argument of the Episcopalians of New-York in favour of their assertion "that the Church of England is established in America, or, at least, in the province of New-York, independently of the acts of the several provincial legislatures."

The fourth and last argument that has been adduced by the said Episcopalians for the same purpose, is, if possible, still weaker than the third. For it is nothing more than an arbitrary supposition that the statute of Uniformity passed in the 14th year of the reign of king Charles the 2d, for establishing and confirming the Church of England in England, and the several penal statutes passed in the same reign against Protestant dissenters from the said church, are of force in the American colonies as well as in England, though they were passed after the settlement of most of the said colonies, and yet make no mention of them. This is directly contrary to the rule that is universally adopted with respect to the operation of all other statutes of England, or Great-Britain, that have been passed

A fourth argument of the said Episcopalians in support of the aforesaid position.

A remark on the said argument.

Another remark on the said argument.

since the settlement of the said colonies ; which is, “ that they are not to be supposed to extend to the said colonies unless they expressly mention them.” And even in asserting this strange doctrine, by which they extend to the American colonies the statutes made in England since the settlement of them, the said Episcopalians are inconsistent with themselves. For they will not allow the English act of toleration which was passed after the said penal statutes, to wit, in the 1st year of king William’s reign, and which exempts such Protestant dissenters as comply with the conditions of it, from the penalties of the said penal statutes, to be in force in the said colonies, notwithstanding they understand the said penal statutes themselves to extend to them. Such is the absurd and wrong-headed zeal and rage of some of the Episcopalian party at New-York against the Presbyterians ;—or, rather, such has been the zeal and rage of some of them upon some former occasions. For, as I observed to you before, I believe the greater part of the Episcopalian writers at this day do not insist either upon this last argument, or upon the preceding, or third, argument, which

which is grounded on the king's supposed legislative power in religious matters as supreme head of the church, and on his instructions to his governours of the American colonies in favour of the Church of England.

But they were both insisted upon in the province of New-York in the reign of queen Anne under the government of the Lord Cornbury, in a wanton and cruel prosecution which that nobleman directed to be carried on against a very worthy Presbyterian minister of the Gospel, whose name was Francis MacKemie. This prosecution was a very remarkable event, and a singular instance of the furious zeal and haughty spirit by which the Episcopalians of New-York (though but a small number of men in comparison to the other inhabitants,) have, at particular times, been actuated in their behaviour towards the Presbyterians, and in consequence of which the latter have been induced to entertain such jealous apprehensions of the increase of the power of the former, and of every measure that has a tendency to bring about such an increase of it, and most especially of the establishment of a bishop in the province, as

The said third and fourth arguments were used by the Episcopalians in the prosecution of Mr. MacKemie, a Presbyterian minister, at New-York in the year 1707.

being the measure which, of all others, would be most likely to produce so mischievous an effect. Mr. Smith's account of this prosecution is, in substance, as follows.

An account of the said prosecution.

This prosecution was carried on in the year 1707. The inhabitants of the city of New-York consisted at that time of Dutch Calvinists, upon the plan of the Church of Holland ; French refugees, upon the Geneva model ; a few English Episcopalians ; and a still smaller number of English and Irish Presbyterians, who, having neither a minister nor a church, used to assemble themselves every Sunday at a private house for the worship of God. Such were their circumstances when Francis MacKemie and John Hampton, two Presbyterian ministers, arrived at New-York in January, 1707. As soon as Lord Cornbury (who hated the whole persuasion) heard that the Dutch had consented to MacKemie's preaching in their church, he sent to forbid it : in consequence of which prohibition the publick worship of the Presbyterians at New-York, on the following Sunday, was performed, with open doors, at a private

Two Presbyterian ministers, named Francis MacKemie and John Hampton, arrive at New-York in Jan. 1707.

They preach to Presbyterian congregations without the government's licence.

private house. Mr. Hampton preached on the same day at the Presbyterian church in the village of New-Town, at the distance of a few miles from New-York. This was considered by Lord Cornbury as a great offence and a fit subject for a prosecution : and he thereupon issued a warrant to the sheriff of the county (whose name was Cardwell) to apprehend them and bring them before him, to answer for their misconduct in having preached without his lordship's licence. They were accordingly apprehended by the said sheriff at the said village of New-Town two or three days after this pretended offence, and were led, as it were in triumph, by a round-about way of several miles, through a place called Jamaica in Long Island, to New-York. They there appeared before Lord Cornbury, who behaved to them with much roughness and ill-manners. They were not, however, daunted by this treatment, but defended themselves with a decent firmness. They grounded their defence upon the English act of toleration passed in the first year of king William's reign, which they supposed to extend to the American colonies,

They are thereupon taken up by the sheriff of N. York upon a warrant issued by Lord Cornbury, the governor,

and are carried before Ld. Cornbury at New-York.

Their defence of themselves on that occasion.

colonies, as well as the penal statutes of Charles the second's reign, against which it afforded a protection: and they offered to produce testimonials of their having complied with the conditions of the said act of toleration in the provinces of Virginia and Maryland, and promised to certify the house in which Mr. MacKemie had preached, to the next quarter sessions of the justices of peace at New-York, as the house in which they intended to officiate to the Presbyterians of New-York as a meeting-house for the purpose of divine worship, agreeably to the directions of the said act of toleration. This defence was built on what I have already observed to be an erroneous supposition, namely, a supposition that the penal laws of king Charles the 2d's reign extended to the American colonies. But, if that supposition had been true, the defence of these ministers would have been a good one; because, if those penal statutes are to be construed to extend to the American colonies, notwithstanding they make no mention of them, the act of toleration ought likewise to be construed to extend to them, by which the operation

A remark on
the said de-
fence.

ration of those penal statutes is taken off with respect to such Presbyterians as comply with the conditions required by it. And it seems probable that these ministers made use of this defence, not so much from a conviction in their own minds that either those penal statutes or the act of toleration did really extend to the American colonies, as from an inability to conceive, or conjecture, upon what other ground than such an extension of the said penal statutes to America, any body could imagine that preaching the Gospel to a Presbyterian congregation could be a crime.

Lord Cornbury, however, did not allow of this defence; but denied, on this occasion, that either the said penal statutes or the said act of toleration extended to America. But, as this opinion concerning the operation of those statutes seemed to take away the crime as well as the defence against it, and his lordship was not disposed to let his prisoners go unpunished, he had recourse to the third argument above-mentioned, and said it was an offence against the laws of the province, because it was contrary to his instructions under the queen's signet and sign-manual that

Ld. Cornbury over-rules their defence, and, in order to make them appear criminal, has recourse to the third argument above-mentioned.

He thereupon
issues a second
warrant to
commit them
to prison.

This warrant
was illegal.

that ministers should preach without his licence. And upon this ground he issued another warrant to the sheriff of New-York to commit the two ministers to prison till further orders. This warrant was illegal, because (if I understand Mr. Smith right,) it commanded the two ministers to be kept in prison *till further orders*, which was referring the time of their enlargement to the governor's arbitrary pleasure, since he might *never* chuse to give those further orders to release them. It should have commanded them to be kept in prison *until they should have been delivered from thence by due course of law*, as, for example, upon a trial and acquittal, or a trial and conviction with a judgement to be imprisoned for a certain time, and the expiration of that time; or the like. It is somewhat surprizing that he should have made this mistake, as he was assisted on this occasion by Mr. Bickley, the king's attorney-general in that province. But Mr. Smith informs us that this gentleman, (though he had obtained an important office in the law,) was rather remarkable for a voluble tongue than a penetrating head or much learning. Under
this

this illegal warrant of commitment the two ministers continued in prison for the space of six weeks and four days, by reason of the absence of Mr. Mompeffon, the chief justice of the province, who was all that time in New-Jersey. But, upon his return to New-York, they applied to him for writs of *habeas corpus*, that they might be brought before him and have the cause of their imprisonment inquired into and determined upon according to law. They were accordingly brought before him upon such writs, and would have been discharged by him from their confinement on account of the illegality of the warrant by which they had been imprisoned, (the chief justice being, as Mr. Smith says, a man of learning in his profession,) if Lord Cornbury had not, on the very morning of the day on which they were to be carried before the chief justice, issued another warrant for their detention, which was drawn up in better form than the former. But here his lordship changed the grounds of his accusation against them, and adopted the doctrine he had before rejected, to wit, that the penal acts of parliament passed in king Charles

They are brought, by writs of *habeas corpus*, before Mr. Mompeffon, the chief justice of the province.

Lord Cornbury issues another warrant for their detention, which was drawn up in better form than the former.

Charge contained in the said last warrant.

They are obliged to give bail to appear and answer for their conduct at the next session of the supreme court of the province.

A bill of indictment is found against Mr. MacKemie; but not against Mr. Hampton.

The latter is thereupon discharged.

The trial of Mr. MacKemie is postponed to the next session of the court, in June, 1707.

the 2d's time against Protestant dissenters extended to the American colonies. He accordingly stated in the warrant he now issued for their detention, "that they had been guilty of preaching in a dissenting meeting-house without having been qualified to do so in the manner directed by the Toleration-act." Upon this warrant they were compelled to give bail for their appearance at the next supreme court of the province to answer such indictments as should be presented against them for the said offence. The court sat a few days after; and then (great pains having been taken to secure a grand jury that should be inclined to favour the prosecution,) bills of indictment were preferred against them for this offence; and the grand jury found that against Mr. MacKemie, but threw out that against Mr. Hampton, no evidence having been offered to them in support of it. And Mr. Hampton was thereupon discharged.

The indictment being found against Mr. MacKemie, the trial of it was postponed till the following session of the court, which was to be in the month of June of the same year,

1707.

1707. It came on accordingly on the 6th of that month; and, as it was a cause of great expectation, a numerous audience attended it. Mr. Roger Mompesson sat on the bench as chief justice, and Mr. Robert Milward and Mr. Thomas Wenham were the assistant judges. Mr. Bickley, the queen's attorney-general for that province, managed the prosecution in the name of the queen; and three advocates, whose names were Reignere, Nicol, and Jamison, appeared at the bar as counsel for the defendant. The indictment stated, That Francis MacKemie, pretending himself to be a Protestant dissenting minister, and contemning and endeavouring to subvert the Queen's ecclesiastical supremacy, unlawfully preached without the governour's licence first obtained, in derogation of the royal authority and prerogative :--- That he used other rites and ceremonies than those contained in the Book of Common Prayer :---And that, being unqualified by law to preach, he nevertheless did preach at an illegal conventicle. And both these last charges were laid to be contrary to the form of the English statutes made and provided in

It comes on on the 6th of June, 1707.

Substance of the indictment.

those cases. For Bickley, the attorney-general, was, at the time of preparing that indictment, come to think that the penal laws of England against Protestant dissenters did extend to the American plantations, though at the first debating of the subject, when the two ministers were first brought before the governour, he had maintained the contrary opinion. And now, at the trial of the indictment, he endeavoured to prove the queen's ecclesiastical supremacy in the colonies; and that the said supremacy was delegated to her noble cousin, the lord Cornbury, with his office of governour of the province; and consequently that his lordship's instructions relating to church-matters had the force of laws. This was his first ground of argument. And, in the second place, he contended that the statute of Uniformity passed in K. Charles the second's time, and the penal laws passed against Protestant dissenters in the same reign, were of force in the American plantations. And upon these premisses he concluded that the jury ought to bring in a verdict against the defendant. On the other side it was insisted by Mr. Reignere, Mr. Nicoll, and Mr.

Arguments of
Bickley, the
attorney-general,
in support of the
indictment.

Mr. Jamison, (the defendant's counsel,) that preaching was no crime by the common law of England ;---That the statutes of Uniformity and the penal laws of Charles the second's time against Protestant dissenters, and the act of Toleration, did not extend to the province of New-York ;---and that the governour's instructions were no laws. And Mr. MacKemie himself (as Mr. Smith informs us) concluded the whole defence in a speech which sets his capacity in a very advantageous light. The jury were satisfied with the reasons alledged in the defence, and, without any difficulty, brought in a verdict of *Not guilty*, notwithstanding the exhortations of the chief justice to bring in a special verdict. Mr. MacKemie ought upon this to have been set at liberty : but the judges were so shamefully partial against him, that they would not discharge him from his recognizance till they had illegally extorted from him all the money expended in carrying on the prosecution against him, which, together with his own expences in defending himself, amounted to eighty three pounds, seven shillings, and six-pence.

Arguments of the counsel for the defendant.

Mr. MacKemie is acquitted.

He is, nevertheless, obliged by the Court to pay the costs of the prosecution that had been carried on against him.

This

This last piece of oppression upon Mr. MacKemie gave occasion to a resolution of a committee of grievances in the new assembly of New-York which met in August, 1708, which is expressed in these words. "Resolved, That the compelling any man, upon trial by a jury or otherwise, to pay any fees for his prosecution, or any thing whatsoever except the fees of the officers whom he employs for his necessary defence, is a great grievance, and contrary to justice."

A resolution of the assembly of New-York in August, 1708, occasioned by the said hardship.

Ld. Cornbury grows odious to the people under his government.

Lord Cornbury, soon after this prosecution, became universally odious to the people both in the province of New-York and the adjoining province of New-Jersey, of which he was also governor. And a variety of complaints were made against his government by the assemblies of both provinces, he having abused his power, and oppressed the people entrusted to his care, in many other instances besides the above malicious prosecution, and, (amongst other things,) having embezzled a sum of the publick money in the province of New-York. These complaints were not without

without effect. For queen Anne (though his lordship was her first cousin) thought fit, in consequence of them, to remove him, in the following year 1708, from the government of both those provinces, and to appoint Lord Lovelace to succeed him; accompanying this mark of her just displeasure with a publick declaration, "that she would not countenance her nearest relations in oppressing her people."

He is removed from his office of governour by Q. Anne in the year 1708.

You see by this account of the prosecution of Mr. MacKemie, that Lord Cornbury and his friend Mr. Bickley, the attorney-general of the province of New-York in the year 1707, and, we may suppose, the members of the grand jury who found the bill of indictment against that poor minister, made use of one or both of the two last-mentioned arguments in support of the doctrine of the establishment of the Church of England in America independently of the acts of the several provincial legislatures, and with an exclusion of all other modes of the Protestant religion. And you see likewise the severe and cruel use they endeavoured to make of this doctrine, to the

Remarks on the aforesaid prosecution of the Rev. Mr. MacKemie.

the annoyance of a vast majority of the inhabitants of the said province; the Episcopalians, (who thus affected to treat the other inhabitants as seditious sectaries that were just objects of the vengeance of the penal laws,) being, (as Mr. Smith informs us,) only about one sixteenth part of the inhabitants of the whole province. You may judge after this how much the Episcopalians must have endeared themselves and their religion by such a conduct to the other inhabitants of the province!

Ld. Cornbury had been guilty of other acts of oppression against the Presbyterians.

But the foregoing prosecution of Mr. MacKemie was not the only instance of the haughty and persecuting spirit with which Lord Cornbury was animated against all dissenters from the Church of England. There are some other exploits of that noble lord of the same kind with this, that are worth your knowing, though they did not produce so formal a discussion of the legal grounds and reasonings by which he endeavoured to justify himself, as the above-mentioned prosecution. One of the most remarkable was as follows.

Lord

Lord Cornbury entered upon the government of New-York on the 3d of May, in the year 1702, in the very beginning of queen Anne's reign. The following summer was remarkable for an uncommon mortality, which prevailed in the city of New-York, and which is distinguished to this day amongst the inhabitants of that province by the name of *the Great Sickness*. On this occasion Lord Cornbury took up his residence at Jamaica, a pleasant village on Long-Island at the distance of about twelve miles from New-York. The inhabitants of this village (says Mr. Smith) consisted at that time, partly, of original Dutch planters, (who had been settled there before the province had been taken from the Dutch in king Charles the 2d's time, who granted it to his brother the duke of York,) but chiefly of Presbyterian emigrants from New-England, who had been encouraged to settle there, after the surrender of the province to the English, by the conditions that had been offered by the duke of York to encourage people to come and settle on his lands: one of which conditions was in these words; "That every township should be

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obliged

A great sickness prevails at New-York in the summer of the year 1702.

Ld Cornbury resides during the said sickness at a village in Long-Island called Jamaica.

This village was principally inhabited by Presbyterian emigrants from N. England.

obliged to pay their own ministers according to such agreements as they should make with them ; the minister being elected by the major part of the householders and inhabitants of the town." By this condition, you will observe, the duke of York gave up to the people of every township in the province which should be settled in pursuance of these conditions, his right (if ever he had such a right) of collating, or appointing, the minister of the said township : and consequently neither he nor his successors, the kings of England, (upon whom the right of governing the said province devolved at the Revolution in 1689) ought afterwards to have claimed, or delegated to their governours, the said right of collating to the benefices of the province in the townships that had been planted in pursuance of those conditions. But, to return to the said village called Jamaica ;---those Presbyterian inhabitants of it who had emigrated from New-England in pursuance of the duke of York's said conditions, had erected in it an edifice for the worship of God according to their mode, and enjoyed a handsome donation of a parsonage-

These Presbyterians had erected a meeting-house there.

sonage-house and piece of glebe-land for the use of their minister. After the ministry-act was passed, by Colonel Fletcher, in 1693, a few Episcopalians crept into the town, and cast a longing eye upon this church of the Presbyterians, and some time after formed a design to get possession of it. This design they thought they were the more likely to succeed in, because, though the building had been erected by the Presbyterians in consequence of a general vote at a town-meeting, or assembly of the English inhabitants of the parish, who were at that time all Presbyterians, yet (from a total want of suspicion, in the persons who passed that vote, that so flagrant an act of injustice would ever be attempted to their prejudice,) there was no clause in the said vote of the town-meeting that expressly declared that the said building should be appropriated to the use of Presbyterians, and should never thereafter be engrossed by any other sect. The want of such a clause was thought a very lucky circumstance by the Episcopalians who meditated the getting possession of it, because they maintained, and the governours of the pro-

The Episcopalians of the village form a design to get possession of this meeting-house.

vince had frequently encouraged them in maintaining, that the religion of the Church of England was, at least, the only *established* religion of the province, if not the only one which it was lawful to exercise, and consequently that all churches that were not, by some very express restrictions, tied down to the sole use of some of the other sects of Protestants, ought to be construed to belong to them. Full of this artful and unjust kind of logick, they resolved to take possession of this church of the Presbyterians while Lord Cornbury, the governour of the province, their great patron, was residing amongst them : and accordingly on a Sunday, in the interval between the morning and evening service, while the Presbyterian minister and his congregation were at their respective homes, without the least suspicion of an attempt of this kind, a party of these Episcopalians rushed into the church and took possession of it.

They suddenly seize on it on a Sunday, during Lord Cornbury's residence in the village.

This occasions further acts of violence,

This first act of fraud and violence provoked the Presbyterians to use force on their side in order to recover what had been so unjustly

unjustly taken from them. They broke into the church, and tore up the seats of it, and afterwards got the key of it and kept out the Episcopalians. But soon after it was again forcibly taken from them. In these contentions the governour, Lord Cornbury, took part with the Episcopalians, and harrassed the Presbyterians by numerous prosecutions, which produced heavy fines and long imprisonments: the terror of which occasioned many of that sect, who had been active in the dispute, to fly out of the province. But what most distinguished his Lordship's zeal on this occasion was an act of treachery and ingratitude which it impelled him to commit towards the person in whose house he then resided at the said village of Jamaica. For, when his Excellency retired to that village in order to avoid the great sickness at New-York, there was no house in the village so fit to receive him as the parsonage-house of the Presbyterian minister of this very church which was the subject of so much contention. He therefore had requested the said minister (whose name was Hubbard,) to lend it him during the time he should be forced to reside

Ld. Cornbury takes part with the Episcopalians.

He behaves ungratefully to the Presbyterian minister, who had lent him his house.

in

in that village: and the said minister had complied with his request in a most obliging manner, and with no small inconvenience to himself. But mark the return the governour made him for his civility! When his Excellency thought it time to quit his retreat in the said village of Jamaica, and repair to New-York, he delivered this house into the hands of the Episcopalians, and at the same time encouraged the sheriff (whose name was Cardwell, and who was afterwards employed in the imprisonment of Mr. Mac-Kemie,) to seize upon the glebe-land which had belonged to this parsonage-house, and to survey it, and divide it into lots, and farm them out for the benefit of the Episcopal minister. These tyrannical measures (says Mr. Smith) justly excited the indignation of the injured sufferers: and that again the more embittered his Lordship against them. They resented; and he prosecuted. Nor did he confine his pious rage to the people of the village of Jamaica: he detested all who were of the same denomination, that is, all Presbyterians. And he extended his religious animosity also to other sects of dissenters from his

He afterwards gave offence to other sects of Protestant dissenters.

his own church, and insisted that neither the ministers nor the schoolmasters who had been chosen to those offices in the parishes inhabited by the Dutch Calvinists, (who were the most numerous sect in the province,) had a right to preach, or teach school, without his licence as governour, grounding himself, (as I suppose,) with respect to school-masters, on the 82d instruction, which I have recited to you in a former part of this conversation. And some of them (Mr. Smith says) tamely submitted to his unauthoritative rule. But in the end these religious severities, together with his gross misconduct in other respects, raised such a general *odium* against him as occasioned the Queen to remove him from his government.

The bad effects of these persecuting measures of Lord Cornbury on the population and trade of the province of New-York, are set forth in the first address of the assembly of that province to Lord Lovelace, his lordship's successor in the government of it, in April, 1709, soon after the said new governour's arrival in the province, in these words;

“ Our

An extract from an address of the assembly of the province of New-York in the year 1709, concerning the ill effects of Ld. Cornbury's persecuting measures.

" Our earnest wishes are, that suitable measures may be taken to encourage the few inhabitants left in the province to stay in it, and others to come. The just freedom enjoyed by our neighbours by the tender indulgence of the government has extremely drained and exhausted us both of people and stock : whilst a different treatment, the wrong methods too long taken, and severities practised, here, have overted and deterred the usual part of mankind from settling and coming hitherto."

I have now gone through all the arguments that I have ever heard, or seen, alledged by the Episcopalians of New-York in support of their favourite doctrine, " that the Church of England is established in that province independently of the acts of its assembly ;" and, I hope, I have also shewn the weakness and insufficiency of those arguments. And I have likewise related to you some of the ill consequences that have resulted from the attempts that have been made by the governors of that province to reduce that doctrine into practice. I therefore hope your curiosity is

now

now satisfied upon this subject, and that we may return to the subject from which we have digressed, which was the history of the steps that have been taken by the missionaries of the English Society for propagating the Gospel, and by other Episcopalians of America, to procure bishops to be established in America by the authority of Great-Britain, and of the effect which those steps have had upon persons of weight and authority in Great-Britain, so as to become a ground of an apprehension in the Americans, that such a measure will one day be adopted.

End of the accounts (begun in page 520,) of the grounds of the opinion of some of the Episcopalians in America, "that the Church of England is legally established in the English colonies there independently of the acts of their respective provincial legislatures."

FRENCHMAN.

Before we return to that subject, I must beg leave to trouble you with one more incidental question, which arose in my mind from what you stated to be the ground of the third argument of the Episcopalians of New-York in support of their favourite doctrine; I mean the king's authority in spiritual matters as supreme head of the church. This, you said, was the ground of the afore-said third argument, which was derived from the king's instructions to his governour in

Of the king's authority in spiritual matters as supreme head of the Church.

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favour

favour of the Church of England; those instructions having been considered by the Episcopalians as having the force of laws in the province by virtue of the said supremacy of the Crown in spiritual and ecclesiastical matters. And, Mr. Bickley, the attorney-general of New-York, as well as Lord Cornbury, relied on this supremacy of the Crown, and the consequent validity of the Queen's instructions to the governour, in the prosecution of Mr. MacKemie. Now I would fain know what is understood by English lawyers to be the meaning and extent of this *supremacy of the Crown in ecclesiastical matters*, and whether it is greater than the supremacy of the Crown in temporal matters, or differs from it in any, and what, particulars, and especially, whether it is the same *supremacy* in ecclesiastical matters which was exercised in England by the Pope in king Henry the 8th's reign a little before he procured the act of parliament to be passed by which the English nation renounced the authority of the Pope and all foreign jurisdiction in matters spiritual, and acknowledged their own sovereign to be the supreme head of their own church.

ENGLISH-

ENGLISHMAN.

Your question is of a delicate nature, and difficult to answer with the accuracy you seem to require. I can better tell you what the king's authority, as supream head of the church, *is not*, than what it *is*. And I will venture to say *it is not* the same power in spiritual and ecclesiastical matters which was exercised in England by the Pope a little before the acts of parliament by which his authority was abolished. For those acts did not purport to vest in the king a new power that he had not before, or, at least, that he had not a right to exercise before, but only to declare the king and all his predecessors to have been, in law and right, the supream Heads of the Church of England, though, by a blind submission to the bishops of Rome, who had usurped the title of Head of the Church of Christ in all parts of the world, and exercised unlawful powers in England under pretence thereof,) they had for many years past neglected, or forborne, to act as such. If, therefore, those acts had reference to any former power that had been exercised with respect to

It is not the same with that which was formerly exercised in England by the Pope.

The purport of the statutes which abolish the Pope's authority in England, and declare the king to be the supream head of the church.

G g g g 2 spiritual

The Popes
had exercised
but little au-
thority in
England be-
fore the reign
of William
the Conque-
ror,

spiritual and ecclesiastical matters in England upon former occasions, and were intended to declare such former power to be now legally inherent in the king, the power so alluded to must have been that which was exercised by the old kings of England before the popes had extended their jurisdiction into it, that is, before king William the Conqueror invaded it. For that monarch, who was as eminent for his policy as his valour, made use of the authority of the Pope to sanctify his invasion of England and give a colour to his title to the crown of it, which of itself was but imperfect, being only a supposed donation, or bequest, of it by the last king, Edward the Confessor, made in a private and obscure manner, or, at least, without any general concurrence of the nation itself by its parliament, or a general assembly of its chiefs, or principal men, to give validity to it. And when the said invader had won the great battle of Hastings, and settled himself on the throne of England, he made use of the Pope's authority to depose Stigand, archbishop of Canterbury, (who was a man of great power and influence in the nation, and had taken part against him,) and promoted a Norman abbot,

abbot, named Lanfrank, to that dignity in his stead; who was indeed a man of great virtue, learning, and wisdom, and, by his prudent and faithful counsels, contributed greatly to support king William in the possession of his new-acquired dignity. Before this time no legate had ever been sent from the bishop of Rome to England. And even in the reign of this great king and of his son and successor, William the second, the Pope did not presume to interfere in the appointment of the bishops of England: but that power was exercised by the kings of England. But in the next reign, that of king Henry the first, this power was, (if I remember right,) extorted from the Crown by the Pope by means of the factious and most obstinate intrigues of Anselm, who was archbishop of Canterbury after the aforesaid Lanfrank. I say therefore that, if the statutes of king Henry the first which abolished the Pope's jurisdiction in England and declared the king to be *supreme head of the Church of England*, meant to assert the king to be rightfully possessed of any specific degree of power under that title, they must have meant to ascribe to him all those

those powers which had been exercised, with the approbation of the kingdom, concerning spiritual and ecclesiastical matters, by any of his predecessors on the throne of England, and more especially in those old times before the Conqueror's reign, when no legate had ever been sent from the Pope into England, and when many of the high powers that were claimed and exercised by the popes in after times in England, had not yet been heard of there. But I rather imagine that those statutes had not any specific degree of power in view, but meant only to declare in general that, as the king was the head of the English nation in temporal matters, and all executive powers respecting those matters were derived from him, and all new laws relating to them were to be made in concurrence with him, so he was also the head of the English nation in spiritual, or ecclesiastical, matters, and that all executive powers respecting those matters ought to be derived from him, and all new laws relating to them to be made in concurrence with him. This I take to be the true meaning of those statutes: and agreeably to this interpretation of them,

The probable intent and meaning of the aforesaid statutes.

it is now generally agreed by lawyers that no new ecclesiastical canons can be made by the convocation of the clergy only, (that is, by the assembly of the bishops and of the representatives of the inferior clergy) so as to become binding on the clergy, without the king's assent, any more than any new laws relating to temporal matters can be made by the two houses of parliament, so as to become binding on the people at large, both clergy and laity, without the king's assent.

But, that you may judge of this matter for yourself, I will mention a few of the principal passages in these statutes whereby such authority in ecclesiastical matters in England is denied to be in the pope, or bishop of Rome, and asserted to be in the king. In the statute of the 25th year of the reign of king Henry the 8th, chap. 19, the preamble begins in this manner. "Whereas the king's humble and obedient subjects, the clergy of this realm of England, have not only knowledged [that is, acknowledged,] according to the truth, *That the convocation of the same clergy is, always*

" bath

The preamble
of the stat.
25 Hen. 8,
cap. 19.

" bath been, and ought to be, assembled only by
 " the king's writ; but also, submitting them-
 " selves to the king's majesty, have promised,
 " in verbo sacerdotii, that they will never
 " from henceforth presume to attempt, alledge,
 " claim, or put in ure, [that is, in use] or
 " enact, promulge, or execute, any new canons,
 " constitutions, ordinances, provincial or other,
 " (or by whatsoever other name they shall be
 " called,) in the convocation, unless the king's
 " most royal assent and licence may to them be
 " had, to make, promulge, and execute the
 " same, and that his Majesty do give his most
 " royal assent and authority in that behalf."

By this preamble it is declared that the king and the English clergy together, in convocation assembled, have a right to make ecclesiastical canons. The same thing is afterwards enacted and confirmed in the first enacting clause of this statute, which prohibits the clergy from making any new canons, or ecclesiastical ordinances, in their convocations, without the king's assent, under pain of being imprisoned and fined at the king's will: and likewise enacts that for the

time

time to come no convocation shall be assembled but by authority of the king's writ.

The preamble of the 21st chapter of the statute of the same 25th year of Henry 8th, states, *that the king's subjects of the realm of England, and of other countries and dominions under his obedience, have been, for many years past, and yet are, greatly impoverished by intolerable exactions of great sums of money claimed and taken by the bishop of Rome, called the Pope, for bulls for archbishopricks and bishopricks, jurisdictions legantine, dispensations, licences, and divers other sorts of bulls, heretofore practised and obtained, otherwise than by the laws and customs of the realm should be permitted: and that the bishop of Rome aforesaid hath not only been to be blamed for his usurpation in the premisses, but also for his abusing and beguiling the king's subjects by persuading them that he hath power to dispense with all human laws and customs of all realms in all causes which be called spiritual; which power hath been usurped and practised by him and his predecessors for many years, in great derogation of the imperial crown of the kings of England*

The preamble
of the stat.
25 Hen. 8,
cap. 21.

Of the spiri-
tual authority
usurped by
the Pope, or
Bp. of Rome,
in England.

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and



The kingdom
of England is,
of right, free
from subjec-
tion to all fo-
reign laws.

and of their authority royal, and contrary to right and conscience: for that the realm of England, (recognizing no superiour under God but only the King's Grace,) hath been, and is, free from subjection to any man's laws, but such as have been devised, made, and obtained within the said realm for the welfare of the same, or such as the people of the said realm, by the sufferance of the king and his progenitors, have taken, at their free liberty, by their own consent, to be used amongst them, and have bound themselves by long use and custom to the observance of the same, not as to the observance of laws of any foreign prince, potentate, or prelate, but as to the custumed and antient laws of this realm, originally established as laws of the same by the said sufferance, consent, and custom, and no otherwise: and that therefore it standeth with natural equity and good reason that in all such human laws made within the said realm, or introduced into the said realm by the said sufferance, consent, and custom, the King and the Lords spiritual and temporal and the Commons of the realm, in parliament assembled, (being the representatives of the whole state of the realm,) should have power

to

to dispense with those, and all other human, laws of the realm, as the quality of the persons and matter shall require, and also to abrogate, annul, amplify, or diminish, the said laws as they shall think necessary for the good and prosperity of the said realm. Here we see the parliament does not express an intention to transfer to the king the powers that had been exercised by the Pope, but asserts that the Pope had usurped the said powers and exercised them illegally, or, in the words of the statute, *otherwise than by the laws and customs of the realm should be permitted*; and it declares that the power of making, abrogating, altering, and dispensing with, all sorts of human laws does, and always did, rightfully belong, to the King, and the Lords spiritual and temporal, and the Commons of the realm, in parliament assembled, conjointly, they being the representatives of the whole state, or people, of the realm.

In the next year, the 26th of king Henry the 8th, a short act of parliament was passed to give the kings of England the title of *The only Supreme Head on Earth of the Church*

H h h h 2

Stat. 26 Hen. 8, giving the king the title of *The only Supreme Head on Earth of the Church of England.*

of



of England, and to enable them to reform all errors, heresies, and abuses, which might lawfully be reformed by any manner of spiritual authority. The former of these clauses gives the kings of England no new powers, but only makes an addition to their titles grounded on that supremacy in matters ecclesiastical which had been already acknowledged, by both the convocation of the clergy and the parliament, in the preceding year, to belong to them of antient right. But the latter clause seems to vest a new power in them, which they had not possessed before, to wit, a power of reforming such abuses and correcting such errors as might lawfully be corrected by any spiritual authority. What was the true extent of this power is difficult to say, on account of the looseness and generality of the words in which it is expressed; which are these; “ *to visit, repress, re-*
“ *dress, reform, order, correct, restrain,*
“ *and amend, all such errors, heresies, a-*
“ *buses, offences, contempts, and enormities*
“ *(whatsoever they be,) which by any man-*
“ *ner of spiritual authority, or jurisdiction,*
“ *ought, or may, lawfully be reformed, re-*
“ *pressed,*

A power of reforming errors and heresies is thereby vested in the Crown.

“ *pressed, ordered, redressed, corrected, re-*
 “ *strained, or amended, most to the pleasure*
 “ *of Almighty God, the increase of virtue*
 “ *in Christ’s religion, and for the conserva-*
 “ *tion of the peace, unity, and tranquillity,*
 “ *of this realm; any usage, custom, foreign*
 “ *laws, foreign authority, prescription, or*
 “ *any other thing, or things, to the contrary*
 “ *thereof notwithstanding.*” But they seem

to have given the king rather a judicial, than
 a legislative, power upon these subjects, that
 is, a power to correct and restrain errors,
 and heresies, and offences against the ecclesi-
 astical laws then in being, in the same man-
 ner as they might have been corrected and
 restrained before this act by the spiritual au-
 thorities already legally existing in the king-
 dom, rather than a power to make changes
 in those laws themselves. And accordingly
 it is now generally agreed, and has been so
 at least ever since the abolition of a certain
 court of ecclesiastical jurisdiction, called *the*
High-Commission court, (which was abolished
 by act of parliament in the 16th year of the
 reign of king Charles the 1st, that is, in the
 year 1641,) that no new ecclesiastical laws,

The power of
 making new
 ecclesiastical
 laws does not

or

belong to the king alone, but to the king and the convocation of the clergy,
 or the king and the two houses of parliament, conjointly.

or canons, can be made by the king alone by virtue of his authority as supreme head of the church, but only by the king and the convocation of the clergy, if they are intended to bind the clergy only, and with the concurrence of the parliament, if they are to be binding on the laity.

General conclusion drawn from the aforesaid acts of parliament concerning the nature of the king's supremacy.

From these three acts of parliament, (which are the most material acts upon the subject) I think, it is evident that the parliament of England, when they threw off the authority of the Pope in the latter part of king Henry the 8th's reign, did not mean to transfer to the Crown the several powers that had been exercised by the Pope, but to declare that the Pope had usurped them and exercised them illegally, and that, so far as they were of a legislative nature, or tended to make, abrogate, alter or dispense with, any human laws, they rightfully belonged to, and ought to be exercised by, the King, the Lords spiritual and temporal, and the Commons of England in parliament assembled, conjointly, as being the representative body of the whole state, or kingdom.

And,

And, as a further proof that the parliament of England never meant to transfer all the powers exercised by the Pope to the kings of England, (as you seemed to suppose,) it may be observed that *the merely spiritual* powers which had been exercised by the Pope, such as the power of granting absolution to penitent sinners upon confession, the power of consecrating bishops, and ordaining priests and confirming adult persons, and consecrating churches and burying-grounds, and administering the sacraments of baptism and the Lord's supper, have never been claimed by the kings of England, or supposed to belong to them by the warmest advocates for their prerogative in either king James the 1st's or king Charles the 1st's reign, when the notions of regal authority were at the highest; though this must have been a necessary consequence of such a general transfer of the powers of the Pope to the king as you had supposed. These merely spiritual powers are understood in England to belong to the clergy only; namely, to the bishops alone, the power of consecrating bishops and ordaining priests, and

No powers of a merely spiritual kind have ever been supposed to belong to the kings of England.

and confirming adults, and, perhaps, of doing some other spiritual acts; and to the bishops and priests in common, the power of administering the sacraments, and granting, or, at least, pronouncing, absolution.

This is the best account I can give you of the authority belonging to the kings of England in consequence of their being the supreme heads of the church.

FRENCHMAN.

I am obliged to you for the trouble you have taken to satisfy my curiosity on this subject. And I now see plainly that I was mistaken in imagining that the parliament of England had taken upon them to transfer to the king all the powers relating to spiritual matters which had been exercised by the popes. This had indeed always appeared to me a very strange proceeding, and not likely to have been that of so wise and spirited a nation as the English: but yet I had been told they really had done so. I am now therefore agreeably undeceived by your account

count of their conduct; which indeed seems very rational and judicious, when they ceased to believe, (as we Romanists do,) that our Saviour, Jesus Christ, (who is the head of our religion,) had actually delegated to the bishops of Rome, as successors of the apostle Saint Peter, the supreme government of his church or of the whole body of Christians, wheresoever dispersed over the face of all the earth. This delegation of authority I know, you Protestants will not allow to have been made even to Saint Peter himself, and much less to the bishops of Rome in all succeeding generations: and without it there is not certainly the smallest reason for admitting those bishops (whom we call the Popes) to have any degree of authority in England more than the archbishop of Paris or Toledo. And therefore, when once the English nation came to believe that there was no foundation in Scripture or ecclesiastical history for such a delegation of spiritual authority to the bishops of Rome as I have just now mentioned, they did very wisely to abolish his jurisdiction throughout their country, and to assert the right of making laws relating to

spiritual matters, as well as laws relating to temporal matters, to belong to themselves alone, that is, to their own king in conjunction with the convocation of the clergy and the two houses of parliament, which are the representative bodies of the clergy and laity of the kingdom, and to declare their own king to be their head, or president, or legal governour, in all spiritual matters, in the same manner as he is in all temporal matters; which (from what you have recited to me from those important acts of parliament which were the foundation of the Reformation in England,) appears to be all that was meant by declaring him to be the supreme head of the Church of England. I now therefore desire you would return to the principal subject from which we have digressed, which was an account of the steps that have been taken by the missionaries of the Society for propagating the Gospel in foreign parts, and by other Episcopalians of America, to procure bishops to be established in that country by the authority of Great-Britain; and of the effects which those steps have had upon persons of weight and authority

The true meaning of the king of England's supremacy in spiritual matters.

End of the digression concerning the king's authority as supreme head of the Church.

ity in Great-Britain, so as to become a ground of an apprehension in the Americans that such a measure would one day be adopted.

ENGLISHMAN.

I have already mentioned to you the arguments that have been used by the said Episcopalians in favour of this measure, which are these four; to wit, 1st, The expediency of having a bishop in the New-England provinces to support the interest of the Church of England, (which is but weak in those provinces,) and to draw away the Protestants of other denominations from their religious opinions and ways of worship to those of the Church of England. This, I think we have agreed, would, instead of being expedient and laudable, be a mischievous, seditious, and wicked attempt, inasmuch as it would tend to disturb the peace of families, and unsettle the religious opinions of the people of those provinces.

A recapitulation of the arguments used by the Episcopalians of America in support of their favourite project of establishing bishops in the colonies.

First argument.

Second argu-
ment.

1. ~~adly~~ The justice of establishing a bishop, in South Carolina or Virginia, or the other southern provinces of North America, where the Church of England is in a flourishing state, in order to accommodate the young men who are intended for the ministry in that church with an easy opportunity of being ordained, and the laity with a like opportunity of receiving the benefit of what these Episcopalians call the important office of confirmation.---In answer to this argument we observed, that it would be time enough to accommodate the said clergy and laity in these particulars, when they desired to be so accommodated, and testified their said desire by petitions to the king from their assemblies to establish a bishop amongst them; and that there was no breach of justice in not giving them what they did not desire to receive. We might even add, that to anticipate their desires in this respect, and establish a bishop among them by the authority of Great-Britain without the concurrence of their assemblies, would be at least an unkind, and even harsh, measure; if not in some degree unjust; as it would be governing them in

to that important article without their own consent, which ought always, as much as possible, to be avoided.

3dly, The policy of establishing bishops in America, in order to preserve in the minds of the people an attachment to monarchical government; to which, it is supposed by the said Episcopalians, the Church-of-Englandmen in America are well disposed, but the Presbyterians and Independants are averse. The answer to this argument is, that there is no necessary, or constant, connection between the doctrines and discipline of the Church of England and monarchical government, tho' hitherto, both in England and America, they have gone pretty much together: but I am afraid, if the present act of parliament for altering the charter of the Massachusetts Bay and that for regulating the government of the province of Quebeck are not speedily * repealed, we shall see great numbers of American

Third argument.

* N. B. Since the supposed date of this Dialogue, (which is in July, 1775,) the former of these acts has been repealed, to wit, in March, 1778. But there seems to be too much reason to fear this has been done too

clean Church-of-England-men give proof of
 the compatibility of their religious sentiments
 with a republican form of government. Nor
 on the other hand is it true that the Presby-
 terians and Independants, either of Great-
 Britain or North-America, are generally
 averse to monarchical government, and more
 especially the Presbyterians. But the whole
 Scottish nation, (amongst whom Presbytery
 is the established religion,) have always been
 attached to monarchical government, both in
 the last century and the present; and the
 Presbyterians of England in the middle of
 the last century were a sort of martyrs for
 monarchy, having been excluded from all
 power in the government for twelve years
 together, (from the death of king Charles
 the 1st to the restoration of king Charles
 the 2d,) in consequence of their attachment
 to it; and they afterwards were the principal
 instruments

too late for the purpose of effecting a reconciliation
 between Great-Britain and the revolted colonies.
 The other act has been neither repealed nor amended,
 notwithstanding the great disgust it has given to the
 bulk of the inhabitants of the province to which it
 relates, as well as to those of the revolted colonies.

instruments of restoring monarchical government in the person of king Charles the 2d in the year 1660. And now I believe that the Presbyterians and other dissenters from the Church of England, both in England and North-America, are divided in their sentiments concerning the most desirable form of government, and that great numbers of them in North-America, and almost all of them in England, are very well disposed to live under the limited monarchical government of Great-Britain, provided it be administered with mildness and discretion, without any desire to exchange it for a republican government. But, if it were otherwise, and the Non-episcopalians of America should generally prefer a republican form of government to a monarchy, the establishment of a bishop amongst them without their consent would only tend to confirm them in that way of thinking, and excite them to hasten the measures that would be necessary to carry their political theory into execution.

A fourth argument adduced by the said Episcopalians of America in support of their favourite

Fourth argument.

favourite project of establishing Episcopacy in that country, was the necessity of such a measure in order to the enjoyment of even a bare toleration of the Church of England in the said country. This argument, we observed, was founded upon a confusion of ideas arising from a loose and inaccurate use of the words *toleration* and *establishment*. For as *toleration* means nothing more than *permission*, it can never be truly affirmed that that part of the religion of the Church of England which consists in the exercise of the spiritual functions of bishops, is not *tolerated* in America, till a law is passed to prohibit and prevent the bishops of England, Wales, and Ireland, (and indeed of every other country where Protestant bishops are established,) from resorting to, and residing in, the British dominions in America, and exercising their spiritual functions there for the benefit of the clergy and laity of their own persuasion. As no such law has hitherto been passed either in Great-Britain or any of the American colonies, it is unjust to say that Episcopacy is not tolerated in America: and those who make this complaint only shew that they

they are desirous of introducing an *establishment* of Episcopacy in America under the cloak and colour of a *mere toleration*.

Fifth
ment. argu-

A fifth argument adduced by some Episcopalian writers on this subject was, that the Church of England was already established, in point of law and right, in most of the provinces of North-America, if not in all, independently of the acts of their respective assemblies: and that, therefore Episcopacy ought to take place, and bishops to be actually appointed, there, in order to carry the said establishment of the Church of England, (which already was legally, or *de jure*, in force in America,) into actual existence and operation. This proposition concerning the legal establishment of the Church of England in America, they built upon four different grounds, to wit, 1st, the transplantation of the laws of England relating to religion and church-government into America by the first settlers there at their emigration from England; 2dly, The operation of certain general words in an act of the English parliament passed at the time of the union of England

and Scotland in the year 1707; 3dly, The king's authority as supreme head of the Church of England, and his instructions under his signet and sign-manual to his governors of his American provinces in favour of the Church of England, which were affirmed by Mr. Bickley, (the attorney-general of the province of New-York in the year 1707,) to have the force of laws by virtue of the said ecclesiastical supremacy; and 4thly, the virtual extension of the statute of Uniformity in king Charles the 2d's time, and the penal statutes passed in the same reign against Protestant dissenters, to America. All these grounds we have carefully examined, and found to be weak and insufficient for the purpose for which they are adduced.

These are the principal arguments that have been made use of by the missionaries of the Society for propagating the Gospel, and some other Episcopalians in America, in support of their favourite measure of establishing bishops in America. Nor do I remember having ever heard, or seen, any other arguments for this purpose.

All

All that remains therefore is to give you some account of the effect which these arguments, and the solicitations of the zealous Episcopalians of America in favour of this measure, have had upon persons of weight and authority in England, so as to become a ground of apprehension to the Americans of other religious persuasions that such a measure would one day be adopted by Great-Britain.

Of the effect of the said arguments on persons of weight and authority in England.

Now as to this matter, I am not able to give you all the information you may probably wish to receive. I can only say that I have often been assured it has been a favourite object with some of the more zealous and high-church bishops, and other clergymen, of England to procure a bishop to be established in America. It has been often mentioned by them in sermons, and pamphlets, and other books, as a measure both just and expedient. And it has been reported that they have several times recommended the measure to the king's ministers of state in a most earnest manner. But no minister has yet been found fool-hardy enough to follow their

Several bishops, and other eminent clergymen, have been thought to be friends to the design of establishing bishops in America.

K k k k 2 advice.

Dr. Secker,
the late arch-
bishop of
Canterbury,
was so in a
very high de-
gree.

advice. And amongst the bishops who were most zealous for adopting this measure was the late Doctor *Secker*, archbishop of Canterbury, a person of great weight and authority in the church, not only on account of the high station he filled in it; but of his excellent understanding and extensive learning, the exemplary regularity of his life and purity of his manners, and an uncommon degree of diligence in the discharge of his pastoral duties, both as a parish-priest (when rector of the large parish of St. James in Westminster,) and as a bishop and archbishop. All these circumstances made him a person of great note and powerful influence. And he unfortunately adopted this high-church and dangerous system of establishing bishops in America.—That he should have done so, has, I own, always appeared to me exceedingly strange, considering the soundness of his understanding and his great judgement on most other subjects, and considering likewise the principles he had been taught in his youth: for he had been born of Presbyterian parents, and educated in that sect. But this circumstance has been considered by some people

people as the very reason of his great zeal for Episcopacy, after he had quitted the way of worship in which he had been educated by his parents; it being not unusual for converts to a set of religious opinions to embrace them with more warmth and zeal than is to be seen in those who have been educated in them. But, whatever may have been the cause of it, it is certain that he was a very zealous and formidable advocate for the measure of establishing bishops in America. He died in August, 1768: and about a year or two before his death there was a considerable ferment in North-America concerning a design then supposed to be in hand to carry this measure into execution, and which, I imagine, was considered as the more likely to be true on account of his known sentiments in favour of it. About that time a certain Episcopal minister in the province of New-Jersey, (who had formerly, as I have heard, been of the Independant sect of Protestants, but had, like archbishop Secker, quitted that persuasion, and come over to the Church of England,) published a pamphlet in favour of this measure of establishing bishops

About the year 1767 the Americans were under great apprehensions that a design of this kind was then in hand.

Dr. Chandler, of Elizabethtown in New-Jersey, published a pamphlet at that time to recommend it.

shops in America, which was written in so plausible a style and manner that it made a considerable impression on the minds of many people in America, exciting the members of the Church of England to take some steps to procure the accomplishment of this long-wished-for event, and the Presbyterians, and other dissenters from the Church of England, to be as active in preventing it. The minister I mean was Dr. Chandler, minister of the Episcopal, or Church-of-England, congregation at Elizabeth-town in New-Jersey. In consequence of the publication of this pamphlet, (which was considered as a prelude to the measure of establishing a bishop in America,) the dissenters from the Church of England at New-York set on foot a periodical paper to answer the doctrines and suggestions contained in it, which they called *the American Whig*, and in which all the acts of cruelty and oppression which had formerly been committed by bishops of all sorts, Protestants as well as Papists, were brought afresh to light, and painted in the strongest colours. And they more particularly expatiated upon those which had been committed by

A periodical paper, called *The American Whig*, was set on foot at New-York, in order to prevent it.

by Protestant bishops in England in the reign of king Charles the first; which occasioned the emigration of the people then called *Puritans* in England, (who were the predecessors of those who have since been called *Non-conformists* and *Protestant dissenters*;) to America about the year 1630, by which the New-England colonies were first effectually peopled. The names of Laud, the proud and cruel archbishop of Canterbury, of Neal, bishop of Durham, and Wren, bishop of Norwich, with the severe and unjust punishments inflicted on Mr. Sherfield, Dr. Leighton, Mr. Prynne, Dr. Burton, and Dr. Bastwick, by their procurement, and the superstitious ceremonies introduced and encouraged by some of them, (which, at the time they were practised, excited a general apprehension amongst the more sober and zealous part of the Protestants in England, that the government had a design to re-establish the Popish religion,) were upon this occasion again presented to publick notice in this paper, in order to excite a general alarm amongst the readers of it concerning the design supposed to be in hand, by shewing to
what

what enormous lengths the spirit of pride and persecution, with which bishops have sometimes been animated, is capable of carrying them: and no pains were spared to make this paper as convincing in point of argument, as instructive in point of historical knowledge, and as poignant and interesting, in point of wit and manner of writing, as possible, and yet withall sufficiently plain and easy for readers of the most ordinary talents, to understand it. And it had the desired effect: it raised a prodigious alarm in the minds of the Americans concerning the supposed design of establishing bishops amongst them, and revived all the antient animosities against that order of clergymen, which for a long time before had (with but a few interruptions) been gradually subsiding. This *American Whig* came out either once a week, or once a fortnight, (I forget which,) during all the year 1767; by which gradual mode of publication the admonitions contained in it had time to sink deeper into the minds of its readers than if it had been published all at one time. And it produced (as we might naturally suppose it would do,) a paper

This paper raised a great alarm in America.

a paper in answer to it, by some friend to the cause of Episcopacy, which was also published periodically, as well as the *American Whig*, and at the same intervals of time between every two numbers, that is, once a week or once a fortnight. It bore a very angry title, and was written, as I remember, in a style of great haughtiness and insolence. It was called *A Scourge for the American Whig*. By Timothy Tickle, Esquire. And to this *Scourge* a reply was written, in defence of the *American Whig*, and intitled, *A Kick for the Whipper*. By Sir Isaac Foot; which was likewise a periodical paper, that came out once a week or once a fortnight. All these three papers were printed at New-York in the years 1767 and 1768, and had the ill effect of setting the minds of the people of America in general, but particularly of the people of the city and province of New-York, (in which they were published,) of the two opposite sects of Episcopalians and Presbyterians, very much upon the fret, and destroying all Christian love and affection in them towards each other. And the ferment excited by these papers, together with the

It gave rise to the publication of two other periodical papers.

These papers raised a great deal of animosity between the Presbyterians and the Episcopalians in N. America.

apprehension of having a bishop established in America, which had occasioned the writing them, were so great and extensive in America, that the House of Representatives of the province of the Massachusetts Bay thought fit, in a publick letter to Mr. Dennis De Berdt, their agent in England, written in January, 1768, to instruct him to use his utmost endeavours to prevent so dangerous an establishment. The passage of their letter relating to this subject is as follows. " *The establishment of a Protestant Episcopate in America is also very zealously contended for. And it is very alarming to a people whose fathers, from the hardships they suffered under such an establishment, were obliged to fly from their native country into a wilderness, in order peaceably to enjoy their privileges, civil and religious. Their being threatened with the loss of both at once must throw them into a very disagreeable situation. We hope in God such an establishment will never take place in America; and we desire you will strenuously oppose it. The revenue raised in America, for aught we can tell, may be as constitutionally applied towards*

An extract from a publick letter of the house of Representatives of the Massachusetts Bay in the year 1768, expressing their apprehensions of a design to establish bishops in America.

" ~~towards~~ the support of prelacy as of soldiers
 " and pensioners. If the property of the sub-
 " ject is taken from him without his consent,
 " it is immaterial whether it be done by one
 " man or five hundred, or whether it be ap-
 " plied for the support of ecclesiastical, or
 " military, power, or both. It may be well
 " worth the consideration of the best politicians
 " in Great-Britain or America, what the
 " natural tendency is of a vigorous pursuit of
 " these measures."* This passage sets forth
 in a clear and lively manner the dread and
 aversion the Americans entertain for the estab-
 lishment of Episcopacy amongst them.

There was another circumstance, (besides
 Dr. Chandler's pamphlet before-mentioned,
 and the angry periodical papers to which it
 had given rise, and the known zeal of arch-
 bishop Secker for the measure of establishing
 bishops in America,) which contributed to
 excite this alarm amongst the Americans at

Lill 2 this

* See the whole of this letter to Mr. De Berdt
 (which is indeed a most able performance and well
 worthy every gentleman's perusal) in Admon's Re-
 membrance, Number 34, pages 167 et seq.

A clause in the
 late stamp-act
 did likewise
 contribute to
 excite the ap-
 prehensions of
 the Americans
 upon this sub-
 ject.

this time. This was the manner of drawing up the famous American stamp-act in the year 1765, and the perseverance of the minister of state in England who procured that act to be passed, in causing it to be drawn up in that obnoxious manner, notwithstanding the intimations he received from some persons who were acquainted with the sentiments of the Americans, that it would give them great disgust. The case was as follows. The persons who were employed, by Mr. George Grenville's direction, to pen the draught of that famous bill, (which was to impose a stamp-duty upon all sorts of writings made use of in law-proceedings, and consequently upon all the processes and sentences, or judgments, of courts of justice,) copied the acts of parliament which had been long in force in England for imposing the like duties upon the same sorts of writings in England, amongst which were the processes and sentences of the ecclesiastical courts in England, which are held under the authority of the bishops; such as citations, or monitions, in an ecclesiastical court, libels, allegations, depositions, answers, sentences, or final decrees, inventories, and
 commissions

commissions issuing out of ecclesiastical courts: When these writings were observed, by some persons who were well acquainted with the sentiments of the Americans upon these subjects, to be mentioned in the draught of the proposed stamp-bill as objects of the intended tax, it is said they took notice of it to Mr. Grenville and told him that they thought the enumeration of these instruments was unnecessary, because there were no ecclesiastical courts in any of the colonies of America, and that it would be prudent to forbear making any mention of them, for fear of making the Americans uneasy upon that subject as well as upon that of taxation. This seemed to be good advice. But Mr. Grenville refused to follow it, and is reported to have made answer, "That, though such courts were not yet established in America, it was very possible that they might be established there in some future time; and that then it would be proper that those instruments should be liable to the said stamp-duty." And accordingly the enumeration of these ecclesiastical instruments was continued in the said stamp-act, and had the ill effect, which had been foreseen, of

reviving

reviving in the minds of the Americans their apprehensions of a design in the British government to establish Episcopacy among them. And, though the said stamp-act was repealed in the following year 1766, the alarm occasioned by the mention it had made of these ecclesiastical instruments was not thereby removed, but received new strength in the same year 1766, or the following year 1767, (I am not sure which,) by the publication of Dr. Chandler's pamphlet above-mentioned in favour of that dreaded measure, and the other angry controversial writings on the same subject, to which that pamphlet gave occasion.

End of the account of the several circumstances which have been thought by the Non-episcopalians of America to indicate a disposition in persons of weight and authority in Great-Britain, to cause bishops to be established among them.

These are the principal instances I at present recollect of the impression made by the advocates for an American Episcopate on the minds of persons of weight and influence in Great-Britain : and they are sufficient, I presume, to shew that the apprehensions of the Presbyterians and other Non-episcopalians in America are not ill-founded ; more especially if we consider (as, I believe, we safely may) a majority of the bishops of England, both

at present and for fifty, or more, years past, as being patrons of that measure, and earnestly desirous of seeing it carried into execution: For those men who have had influence enough, in two successive sessions of parliament, to cause a bill for the *mere toleration* of Protestant dissenters in England, that had been passed by the Commons of Great-Britain, to be thrown out in the House of Lords, are not to be thought contemptible, or insignificant adversaries.* However, whether

* To these grounds for apprehending that such a design has been entertained by the British government, may now (in the year 1778,) be added the dreadful denunciation of Dr. Markham, archbishop of York, against the Americans in his sermon preached before the Society for propagating the Gospel in foreign parts, on the 21st day of February, 1777, when, from the advantages gained by the king's troops over those of the revolted colonies in the latter part of the year 1776, it was supposed by many people that those colonies would soon be reduced to the necessity of submitting at discretion to the government of Great-Britain. At this juncture his Grace laid down the system of government which, he thought, ought, upon the reduction of the colonies, to be adopted with respect to them, in order to prevent a repetition of the rebellious resistance to the authority of the British parliament which

Of the plan of government for North-America recommended and announced by Dr. Markham, archbishop of York, in his sermon on the 21st day of February, 1777.

the

ther, the Americans have sufficient grounds
for

the arms of Great Britain were then employed to suppress. His Grace expressed himself in these words, "Our prospects have been long dark. We may now perhaps discover a ray of brightness. But for the continuance and increase of it, we must rely on the wisdom of our governours; in confidence that Necessity will at last provide those remedies, which Foresight did not; that the dependance of the colonies may be no longer nominal; And, for our spiritual interests, we hope the reasoning which was so just in the case of Canada that, if you allowed their religion, you must allow a maintenance for their clergy," will be thought at least equally strong when it pleads for our own Church:—that those who are disposed to worship God in peace and charity may be thought entitled to a regular and decent support for their ministers:—that they may not continue to want the important office of Confirmation; without the benefit of which even a Toleration is not compleat:—and that those who have a call to the ministry may not be obliged to seek ordination at an expence which is very grievous, and with the hazards of a long voyage, which has been already fatal to many of them. We have, surely, a right to expect that the only established Church should not, against all example, remain in a state of oppression, and that, whatever encouragements may be afforded, they should rather be for the professing it than against it.

"As to what relates to the delinquents, we, for our parts, should wish to say, "Go, and sin no more." But the interests of great States require securities that are not precarious."

This

for entertaining this apprehension of the designs

This passage is expressed in smooth and plausible language: but it contains a variety of most bitter propositions. The last sentence means, I presume, that the members of the Continental Congress and the most active members of the several provincial congresses, or conventions, in America, ought to be hanged, and would be hanged, if the Americans should be subdued, as the archbishop thought was then likely to be the case. What ought to have been done, or would have been done, in such an event, I will not pretend to say. But there seems to be very little use in declaring beforehand, and especially from the pulpit, that such measures of severity would be adopted. The first part of the foregoing passage also, which declares that "*for the continuance and increase of the ray of brightness which had lately shone forth* [in the victories of General Howe's army at Long-Island and the White Plains, and in the taking the forts on Hudson's river, in the autumn of the year 1776] *we must rely on the wisdom of our governours; in confidence that Necessity will at last provide those remedies which Foresight did not: that the dependance of the colonies may be no longer nominal,*" must probably mean that the popular charters of some of the American colonies will be altered and made more favourable to the prerogative of the Crown, as that of the Massachusetts Bay had been in the year 1774; and that citadels and fortresses will be built in the principal towns, and at the mouths of the principal rivers, in North-America, with strong garrisons to be perpetually maintained in them, to keep

The probable meaning of the last sentence of the foregoing extract.

The probable meaning of the first part of the foregoing extract.

signs of the British government, or not, it is most

the inhabitants in awe and subjection to the British government. For these are the things which would most effectually tend to bring the colonies under a real, instead of a nominal, dependance upon Great-Britain. This is a rich text, and would require a very ample comment to bring to light all the political treasures contained in it. But this is a task I shall not undertake; partly because it is impossible to know with certainty what remedies the archbishop had in his mind when he declared his confidence that *Necessity would at last provide those remedies which Foresight did not*, though it is easy to form shrewd conjectures concerning them; and partly because it is not material to the purpose for which I have here cited the archbishop's authority, which is only to shew that those Americans, who are not of the Church of England, have had good reason to apprehend that the British government entertained some designs in favour of Episcopacy and the establishment of that church in America, which would be disagreeable to them. Now upon this subject the archbishop has not left us to guess at his meaning, but has expressed himself pretty fully; insomuch that we may clearly collect from his words in the foregoing passage, the six following propositions; to wit, 1st, That the Church of England is already, in point of law and right, the established church in the British colonies in North-America; 2dly, That it is the only established church there; 3dly, That, notwithstanding it is the established church in those colonies in point of law and right, it, nevertheless,

Six propositions relating to the Church of England, contained in the foregoing extract from the archbishop of York's sermon.

most certain that *they do entertain it*; and
that

the last, is, in fact, in a state of oppression in these colonies, and below a state of toleration; 4thly, That it cannot justly be said to be tolerated in North-America till bishops are established there, to administer to the adult laity the important office of Confirmation; 5thly, That it is also necessary to establish bishops in North-America for the sake of the young men who are educated there for the ministry of the Church of England; that they may not be obliged to come to England to receive holy orders, and thereby put themselves to an expence which they can ill support, and also run the hazard of their healths and lives by the sea-voyage; which has already proved fatal to some of them; 6thly, That, where-ever it is proper to allow a religion to be professed, it is also proper to provide by law a maintenance for the clergy who administer the offices of that religion, and not to leave them to be maintained by the voluntary contributions of their respective congregations;—that this reasoning was wisely and justly adopted by the British parliament, on the occasion of the late Quebec-act in June, 1774, as a ground for reviving the right of the popish priests of the parishes in Canada to the tythes of their popish parishioners;—and that it is, at least, equally strong, when applied to the case of the members of the Church of England in the English colonies in America, and that they ought to be considered as intitled to a regular and decent support for their ministers, or that tythes, or some other legal payment, ought to be established, and would now be

that in a very violent degree. And therefore
good

soon established, by the authority of Great-Britain, in the several English colonies in America, for the support of ministers of the Church of England; and that all the inhabitants of America ought to be liable to pay these tythes, or other contributions, as well at those who are members of the Church of England, (just as, here in England, Presbyterians and Quakers, and other dissenters from the Church of England, are obliged to pay tythes to the ministers of the established church;) because the Church of England is the only established church in America as well as in England.

These propositions I take to be all wholly destitute of any foundation in truth, or law, or good policy: and I hope I have sufficiently shewn them to be so in the course of the foregoing pages. But, whether they are false or true, politick or impolitick, they afford an ample proof that the Non-Episcopalians of America have, of late at least, had just grounds for their apprehensions of a design in the British government to establish bishops and the Church of England in those provinces. For it can hardly be supposed that so eminent a prelate as the archbishop of York, (who had so lately been entrusted with the education of the heir-apparent of the Crown; and, since his removal from that employment, had been promoted to the second dignity in the Church; and who is known to be so intimately connected with some of those men of power among us who have been most zealous for the subjugation of America;) would venture

good policy now requires, that an act of the
British

ture to deliver from the pulpit, on so solemn an occasion as that on which that sermon was preached, any political opinions which he did not know to be agreeable to the sentiments of those great persons by whom the publick councils of the nation are conducted.

And, as this sermon of the archbishop of York seems justly intitled to be considered as a kind of publick previous manifesto, or declaration, from the rulers of the kingdom, of the measures which were thought proper to be adopted by the British government in the event, (which was then thought so probable and so near at hand,) of an intire subjugation of America, it will not be amiss to mention another passage of it which relates to a body of people here in England itself, who have hitherto been thought deserving of great regard; I mean, the Protestant dissenters. Concerning this worthy part of our domestick community the archbishop expresses himself in these words. *“ When a sect is established, it usually becomes a party in the state; it has its interests; it has its animosities; together with a system of civil opinions, by which it is distinguished, at least as much as by its religious. Upon these opinions, when contrary to the well-being of the community, the authority of the state is properly exercised.*

Another extract from the same sermon, relating to the Protestant dissenters in England.

“ The laws enacted against Papists have been extremely severe: but they were not founded on any difference in religious sentiments. The reasons upon which they were founded are purely political.

“ The

British parliament should immediately be
passed

"The Papists acknowledged a sovereignty different from that of the state; and some of the opinions which they maintained made it impossible for them to give any security for their obedience. We are usually governed by traditional nations, and are apt to receive the partialities and aversions of our fathers. But new dangers may arise: and, if at any time another denomination of men should be equally dangerous to our civil interests, it would be justifiable to lay them under similar restraints."

The meaning of this last sentence, when turned into plain English, seems to be this. "The Presbyterians of England are at this day as much enemies to Government, and as dangerous to our civil interests; as the Papists were in the reign of queen Elizabeth, (when they were continually entering into plots with the Spaniards and the Queen of Scots to dethrone and assassinate her,) and in the reign of king James the 1st, (when they formed the design of blowing up the Parliament-house with gun-powder at the time that the King, and all the Lords and Commons of England were to be assembled in it;) which were the times and occasions of making those severe laws against the Papists. Therefore it is now equally just and necessary to make the like laws against the Protestant dissenters."

This is a strange accusation to be brought against that body of men in England who have, of all others, been

passed to remove this apprehension from their
minds

been most uniformly and zealously attached to the government of the Princes of the House of Hanover ever since the first moment of their accession to the throne of these kingdoms !

The whole system of measures, therefore, which the archbishop recommends and announces in that sermon, as fit and likely to be adopted by the British government upon the suppression of the rebellion in America, consists of the following particulars; to wit,

A summary of the measures recommended and announced by the said archbishop.

1st, To extend to the Presbyterians, and other Protestant dissenters, in England, the severe laws that have heretofore been made against Papists.

2dly, To establish tythes, or some other legal payment, in the American colonies for the maintenance of the clergy of the Church of England; and to require persons of all religions to contribute to this payment as well as the members of the Church of England.

br

3dly, To establish bishops in the American colonies.

And, 4thly, To make such civil regulations in the American colonies as shall keep them in a real, not a nominal, dependance on Great-Britain. What these should be, the archbishop does not specify. But it seems probable that he meant the alteration of the popular charters, the erection of fortresses with strong garrisons

minds in the most compleat and satisfactory manner,

garrisons to be perpetually maintained in them, and the creation of many new civil employments with considerable salaries, in the collection of the customs, in the law, and in other departments, in order to make many of the principal people in every colony dependant on the Crown.

Remarks on
the tendency
of the said
measures.

These are the *permanent* measures which the archbishop recommends as fit to be adopted after the reduction of America to the obedience of the Crown and Parliament, besides the temporary measure of hanging a good many members of the Congress and other American conventions, and other principal offenders, for high treason, by way of salutary terror to the rest. Now, if the first of these four permanent measures were to be adopted in England, it would be as likely as almost any thing that can be thought of, to produce a rebellion here at home: and, if either of the other three measures were to be adopted with respect to North-America, after the suppression of the present troubles there, it would almost infallibly (if there was any strength, or spirit, left in the country,) give occasion to a new rebellion there. Such is the tendency of the system of policy laid down by the archbishop. If therefore it really was not approved by our ministers of state and the majorities of both houses of parliament, it is to be lamented that they did not publicly disavow it, and pass a censure on the sermon in which it was delivered, as was done with respect to Dr. Sacheverell's seditious

manner, by declaring it to be the fixed resolution of the king and parliament of Great-Britain that no Protestant bishop shall ever be established in any of the British provinces in America, either by regal or parliamentary authority, without the express consent and concurrence of the assembly of such province.

sedition in Queen Anne's reign, and has been done on many other occasions with respect to papers of dangerous and pernicious import. *Now*, indeed, (in December, 1778,) in consequence of the surrender of General Burgoyne's army at Saratoga in October, 1777, and the treaty between the French king and the Americans in February, 1778, and the conciliatory acts of parliament to which those two events gave rise, this system may be said to have been disavowed, or rather abandoned, by them; at which consequence of those unfortunate events, I presume, all lovers of liberty rejoice. But still, I am persuaded, it will be found necessary, if matters can be happily made up with the Americans, to give them an express parliamentary security, that no attempt shall ever be made by Great-Britain to establish bishops among them, or to force them to pay tythes, or any other contribution, for the maintenance of an Episcopalian clergy, without the consent of their own assemblies,

FRENCHMAN.

End of the account of the grounds of the measure here recommended, of passing an act of parliament to remove from the minds of the Americans all apprehensions of having bishops established among them without the consent of their assemblies.

I am now satisfied that the Non-episcopalians of America have had just grounds to apprehend that the British government would one day undertake the establishment of bishops among them, and perhaps also the establishment of tythes, or some other general contribution, for the maintenance of the Episcopal clergy: and therefore I most perfectly agree with you in thinking that an act of the British parliament ought to be passed without delay, in order to remove this apprehension. I therefore desire you would now proceed to the consideration of the last measure you seemed to think necessary to be taken in the present critical situation of things, in order to prevent a civil war between Great-Britain and her colonies in North-America, which, unless some very speedy and effectual measures be taken to avoid it, seems now to be impending. This last measure was an alteration in the constitution of the provincial councils in the several royal governments of America, which are governed under the king's commissions to his governours, without a charter.

ENGLISH-

ENGLISHMAN.

I am glad we have done with that tedious inquiry concerning the establishment of bishops and the Church of England in America, which had almost exhausted my patience. The measure we are now to take into consideration lies within a much narrower compass, and will take up no great time in discussing. It is (as you well remember,) to amend the constitutions of the provincial councils in the several royal governments of America (which are governed only by the king's commissions without a charter,) by increasing, to at least twice their present number, the members of such councils, and appointing them to hold their seats in the said councils during their lives or good behaviour, instead of holding them at the mere pleasure of the Crown.

Of the amendment of the constitution of the councils of the several provinces in America which are governed by the king's commissions without a charter.

The provincial councils now existing in the several royal governments of America act in their respective provinces in a two-fold capacity, to wit, 1st, as a council of state,

or privy council, to the governour, to assist him with their advice in the execution of those parts of his commission which are branches of the executive power, and, 2dly, as a legislative body that co-operates with the governour and assembly in making laws. It is in this latter capacity that I conceive their constitution to be imperfect, because it is not calculated to obtain for them a sufficient degree of reputation and dignity in the eyes of the people to give weight to their deliberations. Their present constitution is this. They are appointed by the king in his instructions to the governour under the signet and sign-manual, and may be removed at the pleasure of the Crown in the same manner: and their number is only twelve. The Instructions to the governours of the several royal governments in America are all, as I believe, pretty nearly the same. Those to the governour of Georgia relating to this subject are as follows.

INSTRUCTION I.

Appointing the council of the province.

“ With these our instructions you will
 “ receive our commission under the great
 “ seal of Great-Britain, constituting you our
 “ captain-

the captain-general and governor in chief of
 our colony of Georgia in America. You
 are therefore to take upon you the execu-
 tion of the place and trust we have re-
 posed in you, and forthwith to call together
 the following persons by name, whom we
 have appointed to be of our council for
 that colony, [to wit, A. B; C. D; B. F;
 G. H; &c. to the number of twelve.]

INSTRUCTION II.

Oaths to be taken by the governor and council.

And you are, with all due and usual so-
 lemnity, to cause our said commission to
 be read and published at the said meeting
 of our council: which being done, you
 shall then take, and also administer to each
 of the members of our said council, the
 oaths mentioned in an act passed in the first
 year of his late Majesty our royal father's
 reign, intituled, *An act for the further se-
 curity of his Majesty's person and govern-
 ment, and the succession of the Crown in the
 heirs of the late princess Sophia, being Pro-
 testants, and for extinguishing the hopes of*
the

“ the pretended prince of Wales and his open
 “ and secret abettors ; as also make and sub-
 “ scribe, and cause the members of our said
 “ council to make and subscribe, the decla-
 “ ration mentioned in an act of parliament
 “ made in the twenty-fifth year of the reign
 “ of king Charles the second, intituled, *An*
 “ *act for preventing dangers which may hap-*
 “ *pen from popish recusants.* And you, and
 “ every of them, are likewise to take an oath
 “ for the due execution of your and their
 “ places and trusts with regard to your and
 “ their equal and impartial administration of
 “ justice. And you are also to take the
 “ oaths required, by an act passed in the
 “ seventh and eighth years of the reign of
 “ king William the third, to be taken by
 “ governours of plantations “ To do their
 “ utmost that the acts of parliament relating
 “ to the plantations be observed.”

INSTRUCTION III.

*Concerning the oaths to be taken by all persons
 holding places of trust or profit in the province.*

“ You shall administer, or cause to be ad-
 “ ministrated, the oaths mentioned in the afore-
 “ said

" said act, intituled, *An act for the further*
 " *security of his Majesty's person and govern-*
 " *ment, and the succession of the Crown in the*
 " *heirs of the late princess Sophia, being Pro-*
 " *testants, and for extinguishing the hopes of*
 " *the pretended prince of Wales, and his open*
 " *and secret abettors,* to the members and
 " officers of our council and assembly, and
 " to all judges and justices, and all other
 " persons that hold any office, or place, of
 " trust or profit in our said colony, whether
 " by virtue of any patent under our great
 " seal of this kingdom, or our publick seal of
 " Georgia, or otherwise. And you shall
 " also cause them to make and subscribe the
 " aforesaid declaration. Without the doing
 " of all which you are not to admit any
 " person whatsoever into any publick office,
 " nor suffer those who have been admitted
 " formerly, to continue therein.

INSTRUCTION IV.

*Concerning the communication of some of the
 instructions to the council.*

" You are forthwith to communicate to
 " our said council such and so many of these
 " our

“ our instructions wherein their advice and
 “ consent are required ; as likewise all such
 “ others, from time to time, as you shall
 “ find convenient for our service to be im-
 “ parted to them.

INSTRUCTION V.

Concerning freedom of debate in the council.

“ You are to permit the members of the
 “ said council to have and enjoy freedom of
 “ debate and vote in all affairs of publick
 “ concern that may be debated in council.

INSTRUCTION VI.

*Of the number of counsellors necessary for doing
 business as a council.*

“ And, although by our commission afore-
 “ said we have thought fit to direct that any
 “ three of our counsellors make a *quorum*,
 “ it is nevertheless our will and pleasure that
 “ you do not act with a *quorum* of less than
 “ five members, unless upon extraordinary
 “ emergencies, when a greater number can-
 “ not conveniently be had.

INSTRUC-

INSTRUCTION VII.

Of the manner of supplying vacancies in the council.

“ And, that we may be always informed
 “ of the names and characters of persons fit
 “ to supply the vacancies that may happen
 “ in our council of Georgia, you are, from
 “ time to time, when any vacancies shall
 “ happen in our said council, forthwith to
 “ transmit unto our commissioners for trade
 “ and plantations, in order to be laid before
 “ us, the names of three persons, inhabi-
 “ tants of our said colony, whom you shall
 “ esteem the best qualified for that purpose.

INSTRUCTION VIII.

*Concerning the members of the council who shall
 be appointed by the governour himself, to the
 number of not more than seven counsellors.*

“ And, whereas by our commission you
 “ are impowered, in case of the death or
 “ absence of any of our council of the said
 “ colony, to fill up the vacancies in our said
 “ council

“ council to the number of seven, and no
 “ more; you are, from time to time, to
 “ send unto our commissioners for trade and
 “ plantations, in order to be laid before us,
 “ the names and qualities of any member,
 “ or members, by you put into our said
 “ council, by the first conveyance after
 “ your so doing.

INSTRUCTION IX.

*Concerning the qualities to be sought for in the
 members of the council, and in the other offi-
 cers of the civil government, who are to be
 appointed by the governor.*

“ And in the choice and nomination of
 “ the members of our said council, as also
 “ of the chief officers, judges, assistant jus-
 “ tices, and other officers whom you are
 “ impowered to appoint, you are always to
 “ take care that they be men of good life,
 “ well-affected to our government, of good
 “ estate, and of abilities suitable to their
 “ employments.

INSTRUC-

INSTRUCTION X.

Of the suspension of members of the council.

“ You are neither to augment nor diminish the number of our said council, as it is hereby established; nor to suspend any of the members thereof without good and sufficient cause, nor without the consent of the majority of the said council signified in council, after due examination of the charge against such counsellor and his answer thereunto. And, in case of suspension of any of them, you are to cause your reasons for so doing, together with the charge and proofs against the said persons, with their answers thereunto, to be duly entered upon the council-books, and forthwith to transmit copies thereof to our commissioners for trade and plantations, to be laid before us.

“ Nevertheless, if it shall happen that you shall have reasons for suspending of any counsellor not fit to be communicated to the council, you may in that case suspend

such person without their consent. But you are thereupon immediately to send to our commissioners for trade and plantations, in order to be laid before us, an account of your proceedings therein, with your reasons at large, for such suspension, as also for not communicating the same to the council; and duplicates thereof, by the next opportunity.

INSTRUCTION XI.
Concerning the absence and non-attendance of the members of the council.

And, whereas we are sensible that effectual care ought to be taken to oblige the members of our council to a due attendance therein, in order to prevent the many inconveniencies that may happen for want of a *quorum* of the council to transact business, as occasion may require; it is our will and pleasure, that, if any of the members of our said council, residing in the said colony, shall hereafter absent themselves from our said colony, and continue absent for above the space of twelve months

if the month together, without leave from you,
 or from our governour, or commander in
 chief, of our said colony, for the time
 being, first obtained under your, or his,
 hand and seal; or shall remain absent for
 the space of two years successively without
 our leave given them under our royal
 sign-manual; their place, or places, in
 our said council, shall immediately there-
 upon become void: And that, if any of
 the members of our said council, residing
 within the said colony, shall hereafter
 wilfully absent themselves from the coun-
 cil-board, (when duly summoned,) with-
 out a just and lawful cause, and shall
 persist therein after admonition, you sus-
 pend the said counsellors, so absenting
 themselves, till our further pleasure be
 known; giving timely notice thereof to
 our commissioners for trade and planta-
 tions, in order to be laid before us. And
 we do hereby will and require you, that
 this our royal pleasure be signified to the
 several members of our council aforesaid,
 and that it be entered in the council-books
 of our said council, as a standing rule.

INSTRUC-

INSTRUCTION XXXVIII.

Concerning the establishment of the fees of officers in the province.

“ And you are, with the advice and consent of the said council, to establish a table, or tables, of fees to be taken by the respective officers within our said colony; taking care that they be within the bounds of moderation, and that no exaction be made upon any occasion whatsoever, as also that such tables of all fees be publickly hung up in all places where such fees are to be paid. And you are to transmit copies of all such tables of fees to our commissioners for trade and plantations, in order to be laid before us, as aforesaid.

INSTRUCTION LV.

Of the appointment of judges and justices of the peace.

“ You shall not appoint any person to be a judge, or justice of the peace, without the advice and consent of, at least, three of our council, signified in council. Nor shall you execute yourself, or by deputy, any of the said offices.

“ And

“ And it is our further will and pleasure,
 “ That all commissions to be granted by you
 “ to any person or persons, to be judges,
 “ justices of the peace, or other necessary
 “ officers, be granted during pleasure only.

INSTRUCTION LXII.

*Appointing the surveyor general of the customs
 in the district of America in which Georgia
 is comprehended, to be a counsellor extraor-
 dinary in the said province, whenever he
 shall happen to reside there; but without
 being intitled, by virtue of a seniority at
 the council-board acquired by such appoint-
 ment, to become commander in chief of the
 province.*

“ Whereas it is convenient for our royal
 “ service that all the surveyors-general of
 “ our customs in America, for the time be-
 “ ing, should be admitted to sit and vote in
 “ the respective councils of the several islands
 “ and provinces within their districts, as
 “ counsellors extraordinary, during the time
 “ of their residence there; We have there-
 “ fore thought fit to constitute and appoint,
 “ and

“ and we do hereby constitute and appoint,
 “ the surveyor-general of our customs for
 “ our Southern district, and the surveyor-
 “ general of our customs within our said
 “ district for the time being, to be coun-
 “ sellors extraordinary in our said colony :
 “ And it is our will and pleasure that he
 “ and they be admitted to sit and vote in
 “ our said council, as counsellors extraor-
 “ dinary, during the time of his, or their,
 “ residence there.

“ But it is our royal intention, if, through
 “ length of time, the said surveyor-general
 “ should become the senior counsellor in our
 “ said colony, that neither he nor they shall,
 “ by virtue of such seniority, be ever capable
 “ to take upon him, or them, the admini-
 “ stration of the government there, upon the
 “ death, or absence, of our captain-general,
 “ or governour in chief, for the time being.
 “ But, whenever such death, or absence,
 “ shall happen, the government shall de-
 “ volve upon the counsellor next in seniority
 “ to the surveyor-general ; unless we should
 “ hereafter think it for our royal service to
 “ nominate

“ nominate the said surveyor-general, or any
 “ other of our said surveyors-general, coun-
 “ sellors in ordinary in any of our govern-
 “ ments within their survey, who shall not
 “ in that case be excluded any benefit which
 “ attends the seniority of their rank in the
 “ council.

INSTRUCTION XC.

*Concerning the establishment of martial law
 in the province.*

“ You shall not, upon any occasion what-
 “ soever, establish, or put in execution, any
 “ articles of war, or other law-martial, upon
 “ any of our subjects, inhabitants of the said
 “ colony, without the advice and consent
 “ of our council.

INSTRUCTION CIV.

*The governour and council may act according to
 their own discretion, for the advantage and
 security of the colony, in all cases that are not
 provided for by the commission and instruc-
 tions; with some exceptions.*

“ If any thing shall happen that may be
 “ of advantage and security to our said co-
 “ lony, which is not herein, or by our com-
 Vol. II. P p p p “ mission,

“ mission, provided for, We do hereby al-
 “ low unto you, with the advice and con-
 “ sent of our council, to take order for the
 “ present therein, giving to our commission-
 “ ers for trade and plantations speedy notice
 “ thereof, in order to be laid before us;
 “ that so you may receive our ratification, if
 “ we shall approve of the same.

“ Provided always, that you do not, by
 “ colour of any power given you, commence,
 “ or declare, war without our knowledge
 “ and particular commands therein; ex-
 “ cept against the Indians upon emergencies:
 “ wherein the consent of our council shall
 “ be had, and speedy notice thereof given
 “ to our commissioners for trade and plant-
 “ ations, in order to be laid before us.

INSTRUCTION CVI.

*The governour shall not go to Europe without
 the king's exprefs leave.*

“ And, whereas great prejudice may hap-
 “ pen to our service and the security of the
 “ said colony by your absence from those
 “ parts,

“ parts, you are not, upon any pretence
 “ whatsoever, to come to Europe from your
 “ government, without having first obtained
 “ leave for so doing from us under our sign-
 “ manual and signet, or by our order in
 “ our privy council.

INSTRUCTION CVII.

*Restrictions of the power of the eldest counsellor
 of the province, when, by the death, or ab-
 sence, of the governour, he becomes the com-
 mander in chief of the province.*

And, whereas we have been pleased, by
 our commission, to direct that, in case of
 your death or absence from our said colony,
 and in case there be at that time no person
 “ upon the place commissioned, or ap-
 “ pointed, by us to be our lieutenant-go-
 “ vernour or commander in chief, the eldest
 “ counsellor, whose name is first placed in
 “ these instructions to you, and who shall
 “ be, at the time of your death or absence,
 “ residing within our said colony, shall take
 “ upon him the administration of the go-
 “ vernment, and execute our said commission

“ and instructions, and the several powers
 “ and authorities therein contained, in the
 “ manner therein directed : It is, neverthe-
 “ less, our exprefs will and pleasure that, in
 “ such case, the said eldest counsellor, or
 “ president, shall forbear to pass any act or
 “ acts, but such as shall be immediately ne-
 “ cessary for the peace and welfare of our
 “ said colony, without our particular order
 “ for that purpose; and that he shall not
 “ take upon him to dissolve the assembly, if
 “ it should happen that there should be an
 “ assembly then in being; nor to remove,
 “ or suspend, any of the members of our
 “ said council, nor any judges, justices of
 “ the peace, or other officers, civil or mili-
 “ tary, without the advice and consent of,
 “ at least, seven of the council. And our
 “ said president is to transmit over to our
 “ commissioners for trade and plantations,
 “ by the first opportunity, the reasons for
 “ such alterations, signed by himself and
 “ our council, in order to be laid before
 “ us.

INSTRUC-

INSTRUCTION CVIII.

In the absence of the governour in chief from the province, the lieutenant-governour, or commander in chief, of the province for the time being, shall enjoy one half of the governour's salary and fees.

And, whereas we are willing in the best manner to provide for the support of the government of our said colony, by setting apart a sufficient allowance to such person as shall be our governour, lieutenant-governour, commander in chief, or president of our council, residing for the time being within the same; our will and pleasure therefore is, That, when it shall happen that you shall be absent from Georgia, one half, or moiety, of the salary, and of all perquisites and emoluments whatsoever, which would otherwise become due unto you, shall, during the time of such absence, be paid and satisfied unto such governour, lieutenant-governour, commander in chief, or president of our said council, who shall be resident upon the place for the time being;

“ being ; which we do hereby order and
 “ allot unto him towards his maintenance,
 “ and for the better support of the dignity of
 “ that our government.

“ Provided nevertheless, and it is our in-
 “ tent and meaning, that, whenever we
 “ shall think fit to require you by our especial
 “ order to repair to any other of our govern-
 “ ments on the continent of America for
 “ our particular service, that, then and in
 “ such case, you shall receive your full sa-
 “ lary, perquisites, and emoluments, as if
 “ you were then actually residing within our
 “ colony of Georgia, any thing in these
 “ Instructions to the contrary in any wise
 “ notwithstanding.”

These are all the instructions to the go-
 vernour of Georgia that relate to the council
 of the province, excepting some of those re-
 lating to grants of land in the province,
 which is a branch of power in which the
 governour is directed by the commission, it-
 self to act with the advice and consent of
 the council. And by these instructions we
 may

may see, both, how the councils of the American provinces are appointed, and what their powers and duties are.

FRENCHMAN.

This recital of the instructions relating to the council of Georgia lets me much into the nature and constitution of it. I see that, in some respects, it is made to participate with the governour in the exercise of the executive powers of the state; as, for example, in the appointment of judges and justices of the peace, which can only be done with the advice and consent of at least three members of the council; and, in other respects, it is made to participate with him in the performance of certain acts of legislation of a peculiar kind, in which his Majesty does not seem to think the concurrence of the assembly of the province necessary. Such are the establishment of tables of fees to be taken by the several officers of government in the province, and the establishment of martial law, or articles of war, for the government of the forces that may occasionally be

Conclusions drawn from the foregoing instructions concerning the nature and constitution of the councils in the royal governments in America.

be levied and mustered for the defence of the province : and to both these acts, I observe, *the consent*, as well as advice, of the council of the province is expressly required by the above-mentioned instructions. It seems to me therefore that the council of the province is not *a mere privy council*, or *council of advice*, to the governour, (as, I apprehend, the privy council in England is to the king, who may, if he pleases, lawfully do an act of state in his privy-council in direct opposition to the unanimous advice of all the members of it,) but is in some cases *a council of controul* upon him, namely, in all those cases in which, (by either the commission or instructions of the governour,) their *consent*, as well as advice, is necessary to the execution of his publick acts. And, besides these two capacities, of *a mere privy council*, or *council of advice*, to the governour, and *a council of controul* to him with respect to publick acts in which the assembly of the province is not required to join with them, they have, by a clause in the commission, a right to act in a third capacity, namely, as *a legislative body*, whose consent is necessary in conjunction

junction with those of the governour and the assembly of the people's representatives, to the passing of laws, statutes, and ordinances for the peace, welfare, and good government of the province. And this last capacity is the highest and most important of the three, and that in which they are best known, and most frequently, or, at least, most publickly, seen.

This is what I collect concerning the nature of this council from the commissions of governours in chief of the American colonies and from the instructions you have above recited to me. Pray, is this a just conception of it?

ENGLISHMAN.

I think it is a very just one; except that I do not recollect any part of the commission or instructions which requires the governour to hear the advice of the council concerning any act of government, without also requiring that he should obtain their consent to the doing it. I doubt therefore, whether the council of a province ought ever to be con-

The councils of the provinces in the royal governments of America are of a twofold nature; to wit, partly, councils of advice and controul to the governours, and, partly, legislative councils.

considered in the first of the three capacities you have mentioned; or as a mere council of advice. But it certainly is to be considered in the two other capacities of a council of advice and controul and of a legislative council. Now it is in this last capacity, of a legislative council, that I conceive its constitution to be defective and to stand in need of the alterations above-mentioned. For, as a council of advice and controul to the governour in the execution of the powers of his commission, I think it is sufficiently numerous: though even in that capacity the members of it ought, in my opinion, to be made absolutely independant of the governour, or incapable of being either removed or suspended by him, even for an hour; because otherwise they cannot be supposed to act with freedom in the exercise of their power of consenting to, or dissenting from, the acts of government upon which the governour consults them. But, as a legislative body, whose consent is necessary, in conjunction with the governour and the assembly of the people's representatives, to the passing of new laws in the province, the necessity of amending their constitution

In the latter capacity the said councils stand in need of some amendment.

Situation is much more apparent. That they may be useful in this capacity, and contribute to excite a reverence in the minds of the people for the laws they concur in enacting, it is necessary that they should be considered as acting freely and independantly in their deliberations on publick affairs, and as having a large concern, or interest, in the welfare and prosperity of the province, and an extensive knowledge of its various wants and resources. And for this reason it seems to me that they ought to be more in number than twelve persons, and ought to be made, not only independant of the governour, (so as not to be liable upon any occasion to be either removed or suspended by him,) but even independant of the king himself. I mean, so far as not to be removeable from their offices of counsellors without a complaint of some misbehaviour exhibited against them before his Majesty in his privy-council, and a hearing before a committee of the privy-council, by themselves or their counsel, in answer to such complaint, and a report of the said committee of the privy-council to the king confirming the truth of the said com-

Their number ought to be increased, and they ought to hold their seats during their lives or good behaviour.

plaint, and advising his Majesty to remove them from their said offices: after which he should be in his Majesty's choice to remove them from their offices of counsellors, or continue them in the same, by his order in council, as he should think proper.

I could wish therefore that their number was in every province increased to, at least twenty-three members; and in the more populous provinces to a still greater number;—in the large province of Virginia, perhaps, to 43;—and that at least 12 of them should be necessary to make a board, and do business as a legislative body; and that they should be appointed by the king, (either under the great seal of England, or under the publick seal of the province in pursuance of warrants to the governour under the king's signet and his manual directing the governour to make such appointments under the seal of the province,) for their lives, or during their good behaviour; so as not to be liable to be removed, or suspended, by the governour in any case, nor by the king himself, except by his order in his privy-council, after a complaint

plaint and a hearing before a committee of the privy-council; and a report to the king by the said committee, after such hearing, confirming the truth of such complaint, and advising the king to remove the person complained of from his office of counsellor of the province.

It is to be observed, that this mode of removal

This degree of independance I should think sufficient to render the members of the council of a province respectable in the eyes of the people; as it could hardly be suspected that the power of removing them from their seats in council, (when it was thus reserved to the king alone, and to be exercised by him only by his order in council, after a complaint against the person to be removed, and a hearing of the same before a committee of the privy-council, and a report of the said committee, confirming such complaint, and advising the removal of the person complained of,) would be used improperly, or that the fear of its being so used would have any undue influence upon the minds and votes of the members of the council in their public actions as a legislative

the body. But, if such a suspicion was entertained in any province, and was found to lessen the dignity of the council in the eyes of the people, I should, in such case, wish to see the members of the council appointed in a manner still more independant of the Crown, nay, even in such a permanent manner that nothing but a conviction, of treason or felony, upon a trial by jury, should be sufficient to deprive them of their seats in the council. So much do I conceive it for the benefit of the several provinces, that the members of their councils should both be, and be thought by the people, as free as possible from every undue bias and influence in favour of the Crown in their deliberations on the laws which are proposed to be passed for the publick welfare.

Perhaps also the possession of a certain quantity of land in the province ought to be made a necessary qualification for a member of the legislative council of the province. But this is a circumstance which, we may well suppose, his Majesty will usually have regard to in chusing the members of these councils,

councils, in order to increase their weight and influence in their respective provinces:

These are the alterations I would propose in the constitution of those councils in the American colonies which are to join with the governours and assemblies of the people in the important business of making laws. As

to the councils of advice and controul to the governours, who are to assist them in the exercise of the executive powers of their commission, I see no reason (as I said before) to increase their number. They might therefore continue to consist of 12 or 13 members, (for with the surveyor-general of the customs, who was a counsellor extraordinary, you may remember, the number in Georgia was 13;) and should hold their places at the pleasure of the Crown, as the king's privy-counsellors do in England; but should not be liable to be either removed or suspended by the governour. And they might either be members of the greater, or legislative, council, or not, as His Majesty should think fit.

As a council of advice and controul to the governour, they are already sufficiently numerous.

But they should be made unremovable and unsuspendible by the governour.

Good effects
that would
probably arise
from such al-
terations in
the constitu-
tion of the
councils of
the provinces.

If these alterations of the constitution of the councils of the American colonies were to be adopted, I am persuaded they would contribute greatly to the ease and tranquillity of the king's government in them, and to the repressing any factious motions, or attempts of the lower house of assembly, that might tend to prejudice the king's authority. For, as the members of these councils would have been obliged to the king's favour for their appointment to the office of a councillor, they would, probably, from I guess, not sufficiently inclined to support the king's prerogative of the Crown; and the people, when they saw that the council was composed of three, or four, and twenty of the most substantial, and discreet, and upright men in the province, who were in no degree dependent on the governor, and very little dependent upon the king himself, for a continuance in their seats, would consider their opinions upon publick affairs as the safest and best they could resort to, and would therefore acquiesce in the disappointment of such possible attempts as might be made by men of turbulent dispositions in the lower house of assembly,

assembly, to diminish the prerogative of the Crown, when those attempts were disappointed by the opposition of such a council. But in the present state of things the members of the councils in the royal governments are very little respected by the people; because they are considered as the mere tools and creatures of the governour and the Crown, who dare not vote and act according to their real sentiments for fear of being suspended or removed. And sometimes the extreme smallness of their number makes their acting as a legislative body, with a negative on the resolution of a full assembly of the people's representatives, appear absolutely ridiculous. Of this we have an instance in the province of South Carolina, in which Sir Egerton Leigh, (who was lately the king's attorney-general for that province) tells us, (in a pamphlet he lately wrote concerning the affairs of that province,) that there have been seldom more than five members of the council of that province present at the council-board at a time, and that commonly only three members have assembled to dispatch the most weighty concerns.

Inconveniences resulting from the present constitution of those councils.

Such a council must necessarily want dignity in the eyes of the people, and consequently can be of little or no use to the king's government; which can never be well and happily administered but when it meets with the good will and respect of the people who live under it.

The above-mentioned amendment of the constitution of the said councils is recommended by Sir Egerton Leigh.

This measure "of making the members of the legislative councils of the royal governments in America more numerous than they now are, and independent of the Crown, (though originally appointed by it) in order to give them more weight and dignity in the eyes of the people, and thereby to render them more capable of being useful in the support of his Majesty's government" is recommended by some of the warmest friends of Great-Britain in North-America; of which I will mention an instance or two: In the last year, 1774, a very sensible pamphlet was published for Thomas Cadell in the Strand, London, intitled, *Considerations on certain political Transactions of the Province of South-Carolina*. This pamphlet has been generally ascribed to Sir Egerton Leigh, baronet,

baronet, his Majesty's attorney-general for that province, and is that from which I just now cited that remarkable circumstance concerning the small number of members of the council of that province that have usually assembled for the dispatch of publick business. But, whosoever was the author of it, he appears to be a person well acquainted with the affairs of America, and more especially of that province, and a zealous friend to the interests of Great-Britain in America, and to the continuance of an amicable connection between the two countries upon the old footing of a subjection of them both to the authority of the British parliament. In pages 68, 69, 70, of this pamphlet there is the following passage: "In my apprehension, it seems absolutely necessary that the numbers of the council should be increased; and for this plain and obvious reason, because a body of twenty-four counsellors, for instance, appointed by the king from the first rank of the people, most distinguished for their wealth, merit, and ability, would be a means of diffusing a considerable influence through every order of

A passage relating to this subject, extracted from a pamphlet of which he is said to be the author.

“ persons in the community, which must
 “ extend very far and wide, by means of
 “ their particular connections; whereas a
 “ council of twelve, several of whom are
 “ always absent, can have little weight, nor
 “ can their voices be heard amidst the cla-
 “ mour of *prevailing* numbers.

“ I think this body, acting legislatively,
 “ ought to be made independent, by holding
 “ that station during the term of their na-
 “ tural lives, and determinable only on that
 “ event, or on their intire departure from
 “ the province. But the same person might
 “ nevertheless, for proper cause, be displaced
 “ from his seat in council; which regula-
 “ tion would, in a great measure, operate
 “ as a *check* to an arbitrary governour, who
 “ would be cautious how he raised a power-
 “ ful enemy in the upper house by a rash
 “ removal; at the same time that the power
 “ of removal would keep the member with-
 “ in proper bounds. The life-tenure of his
 “ legislative capacity would likewise suffi-
 “ ciently secure that *independency* which is so
 “ necessary to this station, and so agreeable
 “ to

" to the constitution of the parent-state. I
 " know some folks will raise both scruples
 " and fears; but for my own part, I think
 " without much reason: for if we attend to
 " the workings of human nature, we shall
 " find, that a certain degree of attachment
 " commonly arises to the fountain from
 " whence an independent honor flows. Op-
 " position seldom settles upon the persons
 " who are raised to dignity by the favour of
 " the crown, it having so much the appearance
 " of ingratitude, one of the most detested
 " vices; and it ever acts a *faint and languid*
 " part, till a descent or two are past, and
 " the author of the elevation is extinct.
 " From this reasoning it seems tolerably
 " clear to me, that the legislator being for
 " life, and deriving his consequence from
 " the crown, will rather incline to *that*
 " *scale*; and it is not probable that his op-
 " position could in any instance be *rancorous*
 " or *factious*, inasmuch as (though his life-
 " estate is secure,) he would not wish un-
 " necessarily to excite the resentment of the
 " crown, or exclude his descendants or con-
 " nections, perhaps, from succeeding after-
 " wards

“ wards to such a post of honour and dis-
 “ tinction in their native country : in short,
 “ this idea seems to admit such a *qualified*
 “ *dependency*, as will attach the person to
 “ the side of the crown in that propor-
 “ tion which the constitution itself allows,
 “ and yet so much *real independency*, as
 “ shall make him superior to acts of mean-
 “ ness, servility, and oppression. Whether
 “ these sentiments are well founded, or
 “ not, I submit to the impartial judge-
 “ ment of my reader ; what I principally
 “ mean to infer is, that the happiness of
 “ these colonies much depends upon a due
 “ *blending*, or *mixture*, of power and depen-
 “ dence, and in preserving a proper subordi-
 “ nation of rank and civil discipline.” And
 in pages 72, 73, of the same pamphlet is
 the following passage : “ I cannot close this
 “ subject without expressing my sincere con-
 “ cern, that such unhappy disputes divide
 “ mens minds, and distract the publick coun-
 “ cils of this country ; and I have presumed
 “ to offer these considerations to the world,
 “ that the subject may be fully understood,
 “ and that this colony, as well as others, may
 “ judge

Another pas-
 sage from the
 same pamph-
 let.

“ judge of it with the greater ease and cer-
 “ tainty, by seeing every fact fairly stated and
 “ candidly discussed. But I must again re-
 “ peat, that twelve members of the council
 “ bear no kind of proportion to the numbers
 “ of the Lower House, which consists of
 “ forty-eight members : and what still adds
 “ to the defect is, that, as several of the
 “ council are frequently and necessarily ab-
 “ sent on their own private concerns, and it
 “ often happens, that others are either absent
 “ from the province, or, through sickness,
 “ are unable to attend, the council seldom
 “ consists of more than five persons ; and
 “ commonly only three assemble to dispatch
 “ the most weighty concerns. This circum-
 “ stance lessens the real and constitutional
 “ dignity which this body are intended to
 “ maintain, and the people cannot be taught
 “ to reverence or respect an institution, the
 “ business whereof is transacted, like a court
 “ of quarter sessions, by three justices of
 “ peace ! Hence it is, that the middle branch
 “ is in a manner overwhelmed by the force of
 “ numbers in the Lower House, and that
 “ they fall into derision and contempt for the
 “ want

“ want of numbers in their own. I there-
 “ fore most ardently wish to see this evil re-
 “ medied, by such an addition to the number
 “ of his Majesty’s council, as that twelve
 “ members at least may always be assembled
 “ on the business of the state. Then, and not
 “ till then, will this middle branch be able
 “ to maintain a proper balance to support
 “ their own constitutional importance, and
 “ to withstand the overbearing attempts, and
 “ the haughty encroachments, of the Lower
 “ House.

“ I sincerely wish the lasting happiness of
 “ the colony of South Carolina; and I am
 “ firmly persuaded, that nothing is so likely
 “ to promote it, as a timely and speedy inter-
 “ position on the part of the crown, and a
 “ decisive settlement of these uneasy conten-
 “ tions upon the sound principles of the
 “ English constitution.”

The said a-
 mendment of
 the constitu-
 tion of the
 provincial
 councils was
 also recom-
 mended by
 Mr. Andrew

And the late Mr. Andrew Oliver, (who was,
 first, Secretary, and afterwards Lieutenant-go-
 vernour, of the province of the Massachusetts
 bay,) in one of his letters to the late Mr.

Thomas

Oliver, of the Massachusetts Bay.

Thomas Whately, (who had been secretary to the Treasury under the late Mr. George Grenville,) dated February 13, 1769, writes as follows. “ You observe upon two defects

“ in our constitution, the popular election of
 “ the council, and the return of juries by
 “ the towns. The first of these arises from
 “ the charter itself; the latter from our provincial laws.—As to the appointment of
 “ the council, I am of opinion that neither
 “ the popular elections in this province, nor
 “ their appointment in what are called the
 “ royal governments, by the king’s *mandamus*,
 “ are free from exceptions, especially if the
 “ council, as a legislative body, is intended
 “ to answer the idea of the House of Lords
 “ in the British legislature. There they are
 “ supposed to be a free and independent body,
 “ and on their being such, the strength and
 “ firmness of the constitution does very much
 “ depend: whereas the election or appointment of the councils in the manner before-
 “ mentioned renders them altogether dependent on their constituents. The king
 “ is the fountain of honour; and, as such, the
 “ peers of the realm derive their honours

An extract of
 a letter from
 the said Mr.
 Oliver to the
 late Mr. Thomas Whately.

“ from him : but then they hold them by a
 “ surer tenure than the provincial counsellors,
 “ who are appointed by *mandamus*. On the
 “ other hand, our popular elections very
 “ often expose them to contempt ; for no-
 “ thing is more common, than for the repre-
 “ sentatives, when they find the council a
 “ little untractable at the close of the year, to
 “ remind them that May is at hand.”-----

“ It is not requisite, that I know of, that a
 “ counsellor should be a freeholder. Accord-
 “ ding to the charter, his residence is a suffi-
 “ cient qualification : for *that* provides only
 “ that he be an inhabitant of, or proprietor
 “ of lands within, the district for which he
 “ is chosen : whereas the peers of the realm
 “ sit in the House of Lords, (as I take it,)
 “ in virtue of their baronies. If there should
 “ be a reform of any of the colony-charters,
 “ with a view to keep up the resemblance of
 “ the three estates in England, the legislative
 “ council should consist of men of landed
 “ estates. But, as our landed estates here
 “ are small at present, the yearly value of
 “ £. 100 sterling *per annum* might, in some
 “ of them at least, be a sufficient qualifica-
 “ tion. As our estates are partible after the
 “ decease

“ decease of the proprietor, the honour could
 “ not be continued in families, as in England.
 “ It might however be continued in the
 “ appointee *quamdiu se benè gesserit*, and proof
 “ might be required of some mal-practice
 “ before a suspension or removal. Bank-
 “ ruptcy also might be another ground for
 “ removal.”——“ The king might have the
 “ immediate appointment [of these counsel-
 “ lers] by *mandamus*, as at present in the
 “ royal governments.”-----“ Besides this le-
 “ gislative council, a privy council might be
 “ established.” These are the words of Mr.
 Oliver’s letter to Mr. Whateley ; which agree
 in substance with those of Sir Egerton Leigh
 above-recited. And they, surely, are very re-
 spectable authorities, and of prodigious weight
 in favour of such an amendment of the con-
 stitutions of the king’s councils in North-
 America, as has been just now mentioned.
 Alterations of those governments in favour
 of liberty, that are suggested and recom-
 mended by such friends to the authority of
 Great-Britain as the authors of the forego-
 ing passages, seem to be indisputably reason-
 able, and expedient, and fit to be adopted by
 Great-Britain.

You now see the reasons of the amendments I have proposed in the constitution of the provincial councils of the several royal governments in America, as the last measure which seemed to be necessary to a lasting reconciliation between Great-Britain and her colonies. I have only to add my most hearty wishes, that both this and all the former measures which seemed necessary to the same good end, may be speedily adopted ; lest, by even a small delay in the present critical situation of affairs, the opportunity of restoring peace and confidence between the two countries by means of them, be lost for ever.

FRENCHMAN.

I am very well satisfied with the reasons you have alledged in support of this alteration in those councils. It could not fail of increasing their importance and dignity in the eyes of the people, and thereby rendering them more capable of contributing to preserve the peace, and promote the welfare, of their respective provinces. And therefore I intirely agree with you in thinking that it ought

ought to be adopted. I have therefore nothing further to ask concerning the main subject of our conversation, which was the plan, or system of measures, which you thought Great-Britain ought to adopt with respect to the American colonies, in order to prevent the civil war which now seems ready to break out in them, and restore the friendly intercourse and confidence which formerly subsisted between these two parts of the British empire. But I have still a question, or two, to trouble you with upon some incidental matters which have occurred in the latter part of our conversation, in which you have recited to me those instructions to the governour of Georgia which relate to the constitution and powers of the council of the province. I observed that in the 38th and 90th instructions the king directs his governour to take the advice and consent of the council in establishing tables of fees to be taken by the several officers of government in the province, and in establishing articles of war, or other law-martial, in the province. Now these seem to me to be acts of a legislative nature, and therefore only fit to

End of the account of the reasons of the foregoing amendment of the constitution of the councils of the royal governments in America.

A remark on the 38th and 90th instructions of the governour of Georgia.

to be done by the governour, council, and assembly of the province, conjointly, supposing it to be certain (as I have always heard it represented,) that the governour, council, and assembly, together, and not the governour and council alone, are the true and legal legislature of every royal government in America, except this of Quebeck; in which, by the late act of parliament for the regulation of its government, the governour and council alone are invested with this authority. I should therefore be glad to know whether you do not consider these two acts as acts of legislation; and, if you do, whether there is any distinction made by the English law, of acts of legislation into two different kinds, or classes, of which one kind may be done, in Great-Britain, by the king alone, or, in a province, by the delegates of the king's power alone, that is, by the governour and council that have been appointed by him, and the other can only be done with the concurrence of the representatives of the people.

Two questions concerning the said instructions.

ENGLISH-

ENGLISHMAN.

Your remark upon the former of these two instructions, (though not upon the latter, for a reason I will hereafter explain) seems to me to be very just: and the questions you ask in consequence are fair ones, but not very easy to answer with the certainty and precision which you may, perhaps, expect. However, I will give you my opinion upon them (such as it is) with freedom and sincerity.

In the first place, then, I agree with you in thinking that the establishment of fees to be taken by the officers of government in a province is really an act of legislation, and even of taxation. For it is declaring that the said officers of government shall not be obliged to discharge the duties of their respective offices for the benefit of the people and for carrying on the administration of government, unless the people will, for every act of duty in their said offices, pay them such and such stated sums of money. This is, surely, *a law, or rule of action*, prescribed,
by

The establishment of the fees to be taken by the officers of government in a province is an act both of legislation and taxation.

by those who pass it, to both the officers of government, who are to take the fees, and the people, who are to pay them: and therefore I conceive it cannot be legally binding upon either party, unless it be made by that body of men in the province who are legally authorized to make laws for the province. And it is also in some measure a tax, or, at least, has the effect of a tax, upon the people, because it takes money out of their pockets, whether they will or no, for the administration of justice to them, and the transaction of the other publick business of the province, without which the benefits of government cannot be enjoyed; much in the same manner as the late stamp-act would have done, if it had continued in force in these colonies. And it might even be made use of for the very purpose for which taxes are usually imposed, if the government thought proper; I mean, for the purpose of raising a sum of money to be employed as the king should please to direct. For, in order to this, it would only be necessary to make the fees which were appointed to be taken by the several officers of government

Money might be raised upon the king's subjects by that means, to be disposed of as the king should direct.

so large that rich men would be glad to pay the king handsome sums of money to be appointed to the offices, and then to sell the offices for the best prices that could be got for them.

This indirect method of raising money on the people has, I believe, been frequently practised in France. At least I so understand the honest Abbé de Saint Pierre in several passages of his Political Annals of the reign of Lewis the 14th, and particularly in the following passage relating to the expences of the French government in carrying on the unjust war against Holland during the year 1674. "Colbert, [the comptroller-general of the finances of the king of France] seeing the flames of war increase more and more, was obliged to look about for the best means of supporting the kingdom under the additional expence in which it was involved. So that nothing appeared new but burshal edicts for raising money. *Eight new masters of requests were made, and several new offices for gauging*: a tax was laid upon the officers of justice; and another upon

Money has often been raised upon the people in that manner by the kings of France.

An example of this practice in the year 1674.

It was also
done in the
year 1703.

pewter, gold and silver plate, and deeds of exchange. *There likewise came out new creations of above three hundred petty officers in the several ports in Paris, and a creation of new procurators.*" And in the history of the year 1703, when France was engaged in the great war concerning the succession to the Spanish monarchy, the same author tells us, *that there were more creations of offices, both great and small, than during the whole ministry of Phéliepeaux de Pont-Chartrain ; and that every thing was sold to raise money.* And there are other passages in the same author to the same effect. I am therefore clearly of opinion that the creation of civil offices of government accompanied with a right in the officers to demand certain fees for the execution of the several duties of those offices, ought to be considered as an act both of legislation and taxation, and ought therefore to be done only by those persons in whom the right of legislation and taxation is legally vested.

Concerning
the second
question men-
tioned in page
686.

This leads me to your second question, namely, whether the law of England has distinguished

distinguished acts of legislation into two different kinds, or classes, whereof one kind may be done by the king alone, or his delegates, the governour and council of a province, and the other can only be done with the concurrence of the representatives of the people. Now, in answer to this question, I can only say, that I know of no such distinction in any writer on the English law or government, more especially with respect to such laws as affect *the property* of the king's subjects, as is the case with an establishment of a table of fees to be taken by the officers of government. Laws that have this effect, are generally allowed to be out of the king's single power, and fit objects only of the authority of the king and parliament conjointly, if they are to be made in Great-Britain, and of that of the governour and council, and assembly of the representatives of the people, conjointly, if they are to be made in any of the provinces of America. And therefore I am surprized, as well as you, to see this business, of establishing a table of fees, committed, (by the said 38th instruction to the governour of Georgia,) to the management

The answer to
the said question.

of the governour and council only, without the concurrence of the assembly; and think the said instruction ought not to have been so drawn up. And I am the more confirmed in this opinion by observing that in some of the other colonies in the southern district of North-America the fees have been settled by acts of the whole legislatures of those colonies. Two such acts I remember to have seen, the one for the province of Virginia, the other for that of South-Carolina. The former is intitled, *An act for the better regulating and collecting certain officers fees, and other purposes therein mentioned.* And the first paragraph of it is in these words; *Be it enacted by the lieutenant-governour, council, and burgesses of this present assembly, and it is hereby enacted by the authority of the same, that, from and after the commencement of this act, it shall and may be lawful to and for the secretary of this colony for the time being, and all county court clerks, sheriffs, coroners, constables, and surveyors, respectively, to demand, receive, and take the several fees herein after mentioned and allowed for any business by them respectively done by virtue of their several offices, and no other*

An act has been passed by the governour, council, and assembly of the province of Virginia for the establishment of the fees of the officers of civil government in that province.

Preamble of the said act.

other fees whatsoever; that is to say, &c; after which follows the list of fees allowed to each officer. Here we see the consent of *the burgesses of the assembly of Virginia*, (which is the name given to the representatives chosen by the people in that colony,) expressly given, in order to make it lawful for the secretary of the province, and the sheriffs, and coroners, and other civil officers of it, to demand and take the several fees allowed them by the act. And in South-Carolina an act was passed in the year 1698 for the same purpose, by the Earl of Bath, and the other lords proprietors of that province, (to whom the powers of government, as well as the property of the soil, had been granted by the crown,) in conjunction with the assembly of the province. The title of this act is as follows; *An Act for the ascertaining publick officers fees*. And the beginning of the preliminary part of it, before the list of the several fees allowed by it, is as follows. *For as much as all exactions, extortions, and corruptions, are, and ought to be, odious and prohibited in all well-governed kingdoms, common-wealths, and provinces; whatsoever; be it enacted by his excellency,*

An act of the same kind was passed in the year 1698 by the Lords-Proprietors of the said province in conjunction with the assembly of the same.

An extract from the said act.

excellency, John, earl of Bath, Palatine, and the rest of the true and absolute lords and proprietors of this province, by and with the advice and consent of the rest of the members of the general assembly now met at Charles-Town for the south-west part of this province; and it is enacted by the authority of the same; that no publick officer, or person, whatsoever shall demand, or require, any sum of money, fee, or reward, for any matter, business, or thing, belonging to his, or their respective office, or place, other than such and so much fees as are herein after, in the respective tables of fees hereunto annexed, set down, limited, and appointed; upon the forfeiture of one shilling for every penny he, or they, shall take and receive for any business, thing, or matter, relating to his, or their, office, or offices, more than is by this act set down and appointed: the one moiety of the said forfeitures to be paid to the commissioners of the poor for the use of the poor, and the other moiety to the party grieved, who will sue for the same within the year after the receipt of such money, or thing. Here we see that the lords-proprietors of South-Carolina, to whom the powers of government had been delegated

delegated by the crown, do not take upon them to establish tables of fees for the province by their own single authority, but do it *with the advice and consent of the rest of the members of the general assembly of the province.* In the same manner I conceive the same business ought, in strictness of law, to have been done with the consent of the assembly in the adjoining colony of Georgia.

The same thing ought to have been done in the colony of Georgia.

And, if the king had had the right of establishing the said tables of fees by his single authority, and of delegating the power of doing so to his governours and councils of provinces, such delegation could not legally have been made by a private instruction under the signet and sign-manual, but should have been made by an instrument under the great seal. So that this instruction, concerning the establishment of fees by the governour and council only, must, if strictly examined, be considered as illegal and void on both these accounts.

If the king had had the sole right of settling the fees of civil officers in Georgia, he could not have legally delegated such right to the governour and council of the province by an instruction under his signet and sign-manual.

There is, however, a distinction to be made upon this subject between two different sorts

of

A distinction between fees to be paid for acts of justice and fees to be

paid for acts of mere grace and favour.

of fees, namely, fees be paid to the officers of government for acts done in the administration of justice and in the execution of other necessary branches of civil government; and fees be paid to them for acts done by the mere grace and favour of the crown. It is only of the former that I would be understood to affirm that they cannot be established by the single authority of the crown, or by the governour and council of a province by a delegation of that authority to them by an instrument under the great seal. For the latter kind of fees may, I imagine, be legally established in that manner; because what the king may either grant or refuse, as he thinks proper, he may grant *in the manner, or with the conditions*, he thinks proper; one of which conditions may be the paying the officers of his government, (by whose intervention he makes the grant,) such and such fees, or stated sums of money. Thus, with respect to the granting of lands in any province of America, I conceive his majesty has a right, by his single authority, to establish the fees, which the persons, to whom they shall be granted, shall pay to the governour and other officers

The latter sort of fees may, perhaps, be established by the single authority of the Crown.

An instance in the case of fees to be paid for grants of land.

officers of the province for every grant of such and such quantities of land, as well as to settle the other conditions upon which he will grant the lands, (those conditions being not contrary to the general laws of the kingdom, as, for example, not tending to create any military tenures in contravention of the statute of the 12 Car. II. whereby such tenures were abolished;) I say, I conceive the king has a right by his single authority, to establish the fees to be paid upon grants of land, as well as to settle the other conditions of those grants; because he is not absolutely bound in law to make such grants at all. And the same may be said of the fees to be taken for other acts (if there are any such,) of the crown which may be considered as matters of mere spontaneous bounty, and not of strict obligation. But the case is different with respect to such acts as are to be done in the administration of justice or the execution of other necessary branches of civil government, which the king is bound, by his office of king and his coronation-oath, to administer and execute for the benefit of all his subjects. The imposing upon his subjects the condition of paying fees for these

Reason why fees to be paid for acts of justice cannot legally be established in the same manner.

acts of government would be neither more nor less than selling them the benefits of the administration of justice and civil government at the price he thought proper to fix: which would be directly contrary to a very important clause in the famous great charter of England, which is expressed in these few, but significant words; *Nulli negabimus, nulli vendemus, nulli differemus justitiam.* This great charter was granted first by king John about the year 1216, and has since been confirmed no less than thirty times by the following Kings of England, and is now considered as the basis of the constitution of the English government.

A conjecture concerning the motive that may have been the occasion of giving the governor of Georgia the afore-said 38th instruction concerning the establishment of tables of fees.

This distinction, between fees for acts of grace and fees for acts of right, may, perhaps, in some degree account for the late king's having given the governor of Georgia the said 38th instruction concerning the establishment of fees in that province. His majesty's ministers of that time, seeing that the king had a right by his single authority to settle the former sort of fees, may (through a want of attending to this distinction,) have hastily fancied him to have a right to settle all sorts of fees

fees in the same manner : or perhaps (if they were aware of this distinction,) they may have been glad, under the colour of the king's right to establish the former fees, to assume for him a right of establishing the latter; it being not unusual for ministers of state to be eager to lay hold of plausible opportunities of increasing the power of the crown, which, while they continue in that station, is, in a manner, their own power. But this is a poor and pernicious sort of policy, and tends only to excite doubts and jealousies in the minds of the people. In publick affairs, as well as in private, the most direct and open conduct is the wisest, inasmuch as it tends most to create esteem and confidence. And therefore I am persuaded that the most prudent way of settling the fees of the officers of government in any province, (without excepting even those to be taken for acts of grace,) would be to do it by an act of the whole legislature of the province, or with the concurrence of the representatives of the people, as has been done in the provinces of Virginia and South Carolina by the acts I have already mentioned to you.

The best way of settling the fees of the officers of government in a province, (whether they be for acts of right or acts of grace,) is by an act of the whole legislature of the province, the governor, council and assembly.

U u u 2

I come

Of the 90th
instruction,
which relates
to martial law.

I come now to consider the other instruction you took notice of, which directs the Governour to act with the advice and consent of the council in the establishment of martial law.

Now, if this instruction were the only instrument by which this power of establishing martial law was delegated to the governour of a province, I should agree with you in thinking it an illegal and void instruction; and for the same reasons upon which I entertain the same opinion of the above-mentioned 8th instruction, concerning the establishment of fees of office, or, at least, for the first of those reasons to wit, because no power at all, (however legally it may be vested in the crown,) can be legally delegated to a governour by an instrument under the king's signet and sign manual. For, as to the second reason, to wit, that the power of establishing articles of war, or martial law, is a legislative power, and therefore does not belong to the king alone, and consequently cannot be delegated to his representatives alone in one of the American provinces, that is, to the governour and council only, but can only be delegated

delegated to, and exercised by, the whole legislature of a province, or the governor, council, and assembly of it, conjointly; I say, as to this second reason and the conclusion derived from it, though upon the whole I am inclined to think them just, yet it is not without some mixture of doubt. But this instruction concerning martial law was not, as I conceive, intended to communicate any power upon this subject to the governor and council of the province, (as the 38th instruction is intended to do with respect to the establishment of fees,) but, on the contrary, as a restriction of the power of establishing martial law in the province that had been already delegated to the governor alone by a clause in the commission under the great seal. For I suppose there was a clause to that purpose in the commission of the governor of Georgia, because I find such clauses in the commissions of the governors of the provinces of Quebeck and New-York. In the commission of governor of Quebeck, granted to General Murray in November, 1763, the clause relating to this subject is in these words. *And we do hereby give and*

This instruction is not intended to give the governor and council the power of exercising martial law, but to restrain the governor in the use of it;

the said power having been given to the governor alone by a clause in his commission under the great seal,

The clause for that purpose in the commission of the governor of of Quebeck.

grant

grant unto you, the said, James Murray, by yourself, or by your captains and commanders by you to be authorized, full power and authority to levy, arm, muster, command, and employ all persons whatsoever residing within our said province;—and, as occasion shall serve, them to march, embark, or transport, from one place to another, for the resisting and withstanding of all enemies, pirates, and rebels, both at land and sea;—and to transport such forces to any of our plantations in America, (if necessity shall require,) for the defence of the same against the invasions or attempts of any of our enemies;—and such enemies, pirates, and rebels, (if there should be occasion,) to pursue and prosecute in, or out of, the limits of our said province; and, (if it shall so please God,) them to vanquish, apprehend, and take; and, being taken, according to law to put to death, or keep and preserve alive, at your discretion:—and to execute martial law in time of invasion, war, or other times when by law it may be executed;—and to do and execute all, and every other, thing and things, which to our captain-general and governor in chief doth, or of right ought to, belong. And in the commission of
governour

governour of New-York granted to Sir Danvers Osborne, in the year 1754, the clause relating to this subject is expressed in these words. *And we do hereby give and grant unto you, the said Sir Danvers Osborne, by yourself or by your captains and commanders by you to be authorized, full power and authority to levy, arm, muster, command, and employ all persons whatsoever residing within our said province of New-York and other the territories under your government;—and, as occasion shall serve, to march them from one place to another, or to embark them, for the resisting and withstanding of all enemies, pirates, and rebels, both at sea and land;—and to transport such forces to any of our plantations in America, if necessary shall require, for the defence of the same against the invasions or attempts of any of our enemies;—and such enemies, pirates, and rebels, (if there shall be occasion) to pursue and prosecute in, or out of, the limits of our said province and plantations, or any of them, and, (if it shall so please God,) them to vanquish and apprehend, and, being taken, either, according to law to put to death, or keep and preserve alive, at your discretion:—and to execute martial*

The clause for the same purpose in the commission of the governour of New-York.

tial law in time of invasion, or other times when by law it may be executed:—and to do and execute all and every other thing and things which to our captain-general and governour in chief doth, or ought of right to belong.

These two clauses do not differ much from each other; and they both, you see, give to the governour alone, without the council, as a branch of his authority in the capacity of captain-general of the province, the power of executing martial law in times of invasion and at other times when by law it may be executed. And, doubtless, there was a similar clause in the commission of the governour of Georgia: and, if there was, the aforesaid 9th instruction must have been intended only as a restriction upon the said power of executing martial law given him by the commission, by which he was restrained from making use of the said power until he had first obtained the consent of the council of the province to a publick declaration, “ that the situation of the province was such that martial law might lawfully, and ought, in point of general expedience, to be executed

executed in it." And, in this view of it, the said instruction was certainly legal and proper; though I think the same purpose would have been effected in a better manner if this restriction upon the power delegated to the governour by his commission, to establish martial law in the province, had been inserted in that clause of the commission itself by which the said power was given him.

FRENCHMAN.

I am intirely of the same opinion. And indeed I should think that all the instructions you have mentioned to me, concerning the appointment and the duties of the council of the province of Georgia, ought to have been inserted in the commission under the great seal. For there is nothing in them that is of a secret nature; and in one of them (the 4th, if I remember right,) the governour is directed to communicate them to the council. And they make so material a part of the form of government under which the people of the province are to live, that it seems to be but reasonable that the said people should be made

It would be right to insert in the commissions of governours of provinces under the great seal all the matters that are now contained in their instructions.

acquainted with them, as well as the members of the council, and also that they should be communicated by the king to the governour in the most solemn and authentick manner possible: and, in order to these good ends, it seems to be necessary that they should make a part of the governour's public commission under the great seal.

ENGLISHMAN.

Your remark is very just, and might be extended to almost all the other instructions given to governours of provinces under the signet and sign-manual. They are fitter to be made articles of the publick commissions under the great seal than the subject of private instructions; which indeed are instruments that seem, in their nature, to be suited rather to the purpose of conveying the king's pleasure to his ambassadors in foreign courts, when treaties of peace or alliance are in hand, than to that of communicating to the governours of his provinces the permanent powers and rules of conduct by which he means that they shall govern the people committed

committed to their care. I speak of the greater part of the instructions: for there may, perhaps, be some few subjects upon which it may be expedient that the royal pleasure should be made known to the governours of provinces by private instructions rather than by the publick commission. But these subjects I take to be exceeding few; and no instances of any such occur to me just at present.

And I have observed that some of the matters which are the subject of the above-mentioned instructions to the governour of Georgia have been inserted in the commissions to other governours. Thus, for example, the power of suspending the members of the council, which makes the subject of the 10th instruction above-mentioned, is given to the governour of New-York by a clause in the aforesaid commission to Sir Danvers Osborn. This, it is true, is a power which, in my opinion, ought not to have been given to him *at all*: but, as it was given him, it was better to give it him in his commission under the great seal than by a private instruction. And we may say the

This has sometimes been done with respect to some of the instructions above-mentioned.

End of the
remarks on
the instruc-
tions to go-
vernours of
provinces.

same thing of all *the powers* of every kind that are delegated, or intended to be delegated, to the governours of provinces by their instructions, and almost of every other matter contained in their said instructions.

FRENCHMAN.

Of the power
of exercising
martial law.

Well : so much for the instructions to governours of provinces ; concerning which you have given me sufficient satisfaction. But now I must trouble you with one question more concerning this power of exercising martial law, of which we have lately been discoursing. I now see that it is delegated to the governours of provinces by their commissions under the great seal of Great-Britain, (which is the proper and authentick mode of delegating the legal powers of the crown ;) and that the instruction relating to it only operated as a restriction on the use of the said power. But, as this power seems to me a very important one, and to be intirely legislative in its nature, I should be glad to know whether the crown itself possesses such a power in
England,

England, that is, (as I understand it,) a power of establishing articles of war, or martial law, for the government of its armies, and militia in England, and consequently whether it can legally delegate, (even by an instrument under the great seal,) the like power to the governours of the American provinces. An answer to these questions will very much oblige me.

ENGLISHMAN.

The power of establishing articles of war, or martial law, for the government of the armies and militia of England, is not at this day exercised by the crown alone, but by the crown and parliament conjointly, or, (to speak more correctly,) it is exercised by the crown alone in consequence of an act of parliament investing it with the said power. It seems reasonable therefore to conclude that, without an act of parliament for this purpose, the crown could not, at this day, legally exercise such a power. I say *at this day*; because, I believe, in former times the crown did exercise such a power without

How this power is exercised at this day in England.

How in former times.

without any authority from parliament. But it was only in times of imminent danger to the kingdom, when an enemy had actually invaded it, or had made great preparations to invade it. Thus, when the famous Spanish Armada was about to invade England in the year 1588, queen Elizabeth raised an army of 20,000 men for the defence of the kingdom, and also ordered the trained bands, or militia, in the several counties of the kingdom to be drawn out for the same important purpose. And I suppose, (but this I do not recollect to be distinctly related by the historians;) that on that occasion she established some articles of war, or law-martial, for the government of the said army and militia. And the like powers I believe to have been exercised by the crown on former occasions of a similar nature. Now, if this supposition is true, it must be confessed that the crown did, on those occasions, perform acts of legislation by its own single authority, namely, by establishing articles of war, or laws martial, for the government of the armies and militia it so raised. But these acts of legislation seem



seem to have been considered as a sort of necessary appendages to the acts of executive power that gave rise to them, to wit, the levying of armies for the defence of the kingdom, which in times of invasion, or of imminent danger of an invasion, did certainly, in former days, make a part of the prerogative of the crown. This part of the prerogative of the crown is more distinctly set forth, as well as more fully recognized, in the pre-amble of a statute made in the 13th year of the reign of king Charles the 2d, (which was one year after the Restoration) than in any other book of law: and therefore I will recite to you the words in which it is therein expressed. They are as follows.

It is the allowed prerogative of the crown to have the sole and supreme command of all the military force of the kingdom both by land and sea.

*Forasmuch as within all his Majesty's
realms and dominions the sole supreme govern-
ment, command, and disposition of the militia,
and of all forces by sea and land, and of
all forts and places of strength, is, and, by
the laws of England, ever was, the undoubted
right of his Majesty, and of his royal prede-
cessors, kings and queens of England; and
that both, or either, of the houses of parliament
cannot, nor ought to, pretend to the same."*

This

The power of exercising martial law, or establishing articles of war, seems to have been claimed by, and allowed to belong to, the crown in former times, as *incidental* to the aforesaid prerogative of commanding the whole military force of the kingdom.

This statute, you see, clearly acknowledges the kings of England to have the sole right of commanding all the military force of the kingdom both by sea and land. And I conceive that the power of establishing articles of war, or martial law, for the government of these forces, when raised and embodied, (though it was a power of a legislative nature,) was formerly exercised by the crown as *incidental* to the said right of commanding the said forces. And, if it was so exercised, it formed an exception to the general maxim concerning the British government, that the legislative power of it does not belong to the king alone, but to the king and parliament conjointly. But it was an exception founded on a supposed necessity, arising from the dangerous and disturbed state of the kingdom, when invaded, or about to be invaded, by a hostile army, which might be thought to render the meeting of the parliament impracticable. For it was only in these cases of imminent danger to the kingdom that it was lawful for the king to levy troops at all of any kind, either army or militia; and consequently it was only in those cases that
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the king could have any occasion to exercise this peculiar branch of legislative authority by establishing articles of war, or laws martial, for the government of such troops.

Nor was the *mere* being at war with a foreign nation deemed to be a sufficient degree of danger to the kingdom to authorize the king to establish martial law for the government of any troops within the kingdom, unless the kingdom was either actually invaded, or, at least, upon the point of being invaded, by a hostile army. This is manifest from a clause in the famous act of parliament passed in the third year of the reign of king Charles the 1st, and known by the name of *the Petition of right*, which, together with the occasion of making it, I will now proceed to state to you.

King Charles the 1st, soon after his accession to the thrones of England and Scotland, in the year 1625, entered hastily and injudiciously into a war with Spain, and sent an army and fleet to take the town of Cadiz in that kingdom. This expedition failed of

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success,

The mere being at war with a foreign nation was not sufficient to authorize the king to establish martial law for the government of any troops within the kingdom.

An account of the clause relating to this subject in the famous act of parliament called *the Petition of Right*, in the 3d year of K. Charles the 1st, A.D. 1628.

success, and the fleet and troops returned to England, and were then (as we are told by Rushworth, a famous historical collector, who lived at that time,) *scattered here and there in the bowells of the kingdom, and governed by martial law. The king gave commissions to the lords lieutenants [of counties,] and their deputies, in case of felonies, robberies, murders, outrages, or misdemeanours, committed by mariners, soldiers, or other disorderly persons joining with them, to proceed, according to certain instructions, to the trial, judgement, and execution of such offenders, as in time of war. And some were executed by those commissions.* This was in the year 1626. See Rushworth's Collections, Vol. I. page 419.

Two years after, in the parliament that passed the *Petition of right* above-mentioned, this measure, of granting commissions to execute martial law, was condemned as illegal, notwithstanding it was confined to the punishment of offences committed by mariners, soldiers, and disorderly persons joining with them, and notwithstanding the king was actually engaged in war with the king of Spain.

Spain at the time of granting those commissions : and the reason given for this condemnation of the said measure was this ; “ that, as there was no enemy in the kingdom, the ordinary course of justice was not interrupted, but the courts of justice sat as freely to administer justice as they had used to do before the war against Spain had been declared ; and consequently it was possible to try and punish those mariners, soldiers, and others, for the said felonies, robberies, and murders, and other offences, according to the known laws and statutes of the realm, without having recourse to a more summary and arbitrary mode of trial.” The clause in the Petition of right relating to this subject is as follows.

And, whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants, against their wills, have been compelled to receive them into their houses, and there to suffer them to sojourn, against the laws and customs of this realm, and to the great grievance and vexation of the people :

The aforesaid clause of the Petition of Right.

And whereas also by authority of parliament, in the 25th year of the reign of king Edward the third, it is declared and enacted, That no man shall be fore-judged of life or limb against the form of the great charter and the law of the land: and by the said great charter and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm or by acts of parliament: And whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted, by the laws and statutes of this your realm:

Nevertheless, of late, divers commissions under your Majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners, with power and authority to proceed within the land according to the justice of martial law against such soldiers and mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever; and by such summary course and order

order as is agreeable to martial law, and is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial :

By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been adjudged and executed :

And also sundry grievous offenders, by colour thereof claiming an exemption, have escaped the punishment due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused, or forborn, to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial law, and by authority of such commissions as are aforesaid; which commissions, and all others of like nature, are wholly and directly contrary to the said laws and statutes of this your realm :

They

They do therefore humbly pray your most Excellent Majesty,

That your Majesty will be pleased to remove the said soldiers and mariners, and that your people may not be so burthened in time to come; and that the foresaid commissions for proceeding by martial law may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever, to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be destroyed or put to death, contrary to the laws and franchises of the land.

These are the words of this most excellent statute; which is said to have been penned by the famous Sir Edward Coke, and is, without all comparison, the most important and beneficial statute to publick liberty of all the laws now in being, and therefore ought to be most diligently read and studied, and constantly kept in remembrance, by every lover of the English constitution. And from these words we may derive the two following conclusions; to wit, 1st, That martial law, in the cases in which it may be legally exercised, relates

Two conclusions from the said clause,

relates only to *mariners, and soldiers, and those persons who join themselves to them*, and not to the inhabitants of the kingdom at large, who are quiet at their homes and have no connection with the army, as many people are too apt to suppose; and 2dly, That commissions to execute martial law, (even with respect to mariners, soldiers, and other dissolute persons who join with them,) are illegal in time of war as well as in time of peace, unless the war be at home in the heart of the kingdom, and the success and power of the enemy be so great that the courts of judicature cannot sit to administer justice upon the offending soldiers and mariners according to the known laws and statutes of the realm. Nor is it clear that even this case is excepted from the general prohibition of the exercise of martial law contained in this excellent statute, in these words, “ *and that hereafter no commissions of like nature may issue forth to any person, or persons, whatsoever, lest, by colour of them, any of your Majesty’s subjects be destroyed or put to death, contrary to the laws and franchises of the land.*” But, as the main ground of this prohibition (which is
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the practicability of trying and punishing such offenders according to the known laws and statutes of the realm,) does not extend to that case, it may perhaps be reasonable to suppose that the prohibition itself was not meant to extend to it. But in all cases short of that case of the general internal confusion of the kingdom, and a necessity, thence resulting, to have recourse to such a remedy, it is clear that the exercise of martial law is illegal.

This clause of the *Petition of Right* seems not to have been an alteration of the law upon this subject, but only a declaration of it.

Nor does this clause of the *Petition of right* seem to have made a change of the law in this particular, under the appearance of *only declaring* it; (which, I believe, has sometimes been done;) but I am inclined to think that the law was at that time (that is, in the year 1628,) generally understood to be so already. For I observe that in the debates upon this subject, previous to the passing this famous *Petition of right*, Serjeant Ashley, the king's serjeant, (who was eminently solicitous to preserve the king's prerogatives at their greatest height,) admits that it was so.

Serj. Ashley's words upon this subject.

His words are as follows. "*The martial law likewise (though not to be exercised in times of peace,*

peace, when recourse may be had to the king's courts,) yet in time of invasion, or other time of hostility, when an army royal is in the field, and offences are committed which require speedy resolution, and cannot expect the solemnities of legal trials, then such imprisonment, execution, or other justice done by the law-martial, is warrantable, and is jus gentium, which ever serves for a supply in defect of the common law, when ordinary proceedings cannot be had."

These are the words of Mr. Serjeant Ashley in a famous speech which he made at a conference between the two houses of parliament concerning the said Petition of right, in which he endeavoured, in behalf of the Crown, to justify certain imprisonments which had been made, before the sitting of the said parliament, by the special order of the king in his privy council, without assigning the causes of the said imprisonments in the warrants by which the parties had been committed. In the course of his argument on this subject he advanced a most dangerous doctrine, to wit, that there existed in the kingdom a species of law, which he called the *Law of State*, or *State-necessity*, that did not proceed by the law of the land, but ac-

Serjt. Ashley, in the same speech, shew'd a great degree of zeal for the prerogatives of the Crown.

He advanced on that occasion a very dangerous doctrine:

for which he
was ordered
into custody
by the House
of Lords.

Conclusion
from his words
above-men-
tioned.

The govern-
ment of the
army in Eng-
land is carried
on at this day
by annual acts
of parliament
called *Mutiny-
acts*.

according to natural equity ;---a doctrine that appeared so very mischievous and unconstitutional to the House of Lords, that, (though he advanced it only in the capacity of a counsel, or advocate, arguing for his client, the Crown) they ordered him into custody for advancing it. His advancing this dangerous doctrine in support of the power of the Crown shews that he was not disposed to curtail its prerogatives : and therefore we may well suppose that the right of the Crown to exercise martial law was not more extensive than he allowed it to be in the words I have already quoted from him. We may therefore, I think, safely conclude that, if the exercise of martial law by the king's single authority is ever legal (which may, perhaps, be doubted since the above-mentioned strong and general prohibition of it by the petition of right,) it is only in that case of extreme necessity described by Serjeant Ashley, *when recourse cannot be had to the king's courts*. But in England the exercise of this prerogative of the Crown is, *at this day*, rendered totally unnecessary with respect to the army, by the annual renewal of the mutiny-act, which impowers
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the king to establish articles of war for the good government of the army during the time of its continuance, and thereby takes away all pretence, or occasion, for establishing them, that is, for establishing martial law, by virtue of his own single authority.

The illegality of establishing martial law for the government of the army in time of peace, any otherwise than by act of parliament, is recognized and recited in the preamble to the annual mutiny-acts; which runs in these words:

“Whereas the raising, or keeping, a standing army within this kingdom in time of peace, unless it be with consent of parliament, is against law:

The preamble of these annual Mutiny-acts.

And whereas it is judged necessary by his Majesty and this present parliament that a body of forces should be continued for the safety of this kingdom, the defence of the possessions of the Crown of Great-Britain, and the preservation of the balance of power in Europe; and that the whole number of such forces should consist of twenty-one thousand, nine hundred, and thirty, effective men, invalids included:

And whereas no man can be forejudged of life or limb, or subjected, in time of peace, to any kind of punishment within the realm, by martial law, or in any other manner than by the judgment of his peers; and according to the known and established laws of this realm; yet, nevertheless, it being requisite for the retaining all the before-mentioned forces in their duty, that an exact discipline be observed, and that soldiers who shall mutiny, or stir up sedition, or shall desert his Majesty's service, within this realm, or the kingdom of Ireland, Jersey, Guernsey, Alderney, and Sark, or the islands thereunto belonging, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow. Be it therefore enacted, &c."

It is only by virtue of these mutiny-acts (which are never passed for more than one year with respect to troops employed in Great-Britain, and only for two years with respect to those employed in America,) that courts martial are held for the punishment of soldiers and officers who are guilty of mutiny

mutiny and desertion, and other military offences; so that the only martial law now exercised, or ever mentioned, in England, for the government of the regular forces, is founded on the authority of parliament.

And, since the militia of England has been put upon a better footing than it used to be, and is become an important part of the national defence, (which is only within about twenty years past) the regulation of that also has been carried on intirely by acts of parliament; of which several have been made for that purpose, as experience has, from time to time, shewn the defects of former provisions, and the necessity of making new ones. And, when the said militia are embodied for the defence of the kingdom, it is only by virtue of these acts of parliament that they become subject to the same articles of war which have been established by the crown (in pursuance of the power before-mentioned, granted to it for that purpose by the aforesaid acts of parliament called *The Mutiny-Acts*) for the government of the regular army. So that all the martial

law

The militia in England is also governed by virtue of certain acts of parliament.

law now exercised in England, with respect both to the militia and the army, is founded on the authority of parliament. And from the long continuance of this practice, of proceeding in this matter by the authority of parliament, I am inclined to think it would hardly now be thought legal in the crown to exercise martial law in England, without that authority, upon any occasion whatsoever. But, if it would be legal in any case, you see, by the clause above-recited from the famous Petition of Right, that it could only be so in that case of extreme necessity, mentioned by Serjeant Ashley, arising from an invasion and disturbance in the heart of the kingdom, which should make it impossible to have recourse to the ordinary courts of justice for the punishment of crimes committed by officers or soldiers.

This is the best account I am able to give you of the right of the crown, independently of the parliament, to establish martial law in England.

FRENCH-

FRENCHMAN.

I am glad to hear that this very important power can so seldom be exercised by the crown alone without the parliament; and still more so, that the idea of exercising it in that manner is almost extinct in England. For, if the crown could exercise this power, I will not say, in time of absolute peace, but even in time of war, when the events of war do not disturb the internal government of the kingdom, I should apprehend it might soon be employed to destroy all the liberties of the nation. And I am likewise glad to find, that this power of exercising martial law, in those cases in which it may, or, rather, might formerly, be legally exercised in England, related only to the army, or militia, that was collected together for the defence of the kingdom, and not to the rest of the people, who continued in peace in their respective habitations. For, if this law related to all the subjects of the kingdom, and could be lawfully exercised whenever the king was at war with any other state, it would

Remarks on the utility of the foregoing restrictions on the exercise of martial law in England.

Dangerous consequences that might follow from the exercise of martial law, even in time of war, if it

extended over all the king's subjects as well as the army and militia.

would be in the power of the king at any time to shut up all his courts of law, and establish a military and arbitrary government over his subjects, under the name of martial law, whenever he thought fit, by entering into a war with some foreign state, or other; because the power of making war is an acknowledged part of his prerogative. And, if this were the case, it would not be surprizing if Great-Britain should be kept, on this account, in a perpetual state of war.

This wrong idea of the extent of martial law seems to have been entertained in the province of Quebec.

Nevertheless this erroneous idea of the extent of martial law seems to be entertained by many people in this province, and, amongst the rest, by our governour, general Carleton; who has lately, by an instrument not passed under the publick seal of the province, but only under his own private seal of arms, and not stated to be passed with the advice and consent of the council of the province, established martial law among us in this extent, in these words: *To the end (he says) that so treasonable an invasion [from the rebels in the neighbouring revolted colonies] may be soon defeated; that all such traitors, with their said abettors,*
may

may be speedily brought to justice ; and the publick peace and tranquillity of this province again restored, which the ordinary course of the civil law is at present unable to effect ;---
I HAVE THOUGHT FIT to issue this proclamation, hereby declaring, that, until the aforesaid good purpose can be attained, I shall, in virtue of the powers and authority to me given by his Majesty, execute martial law, and cause the same to be executed throughout this province : and to that end I shall order the militia within the same to be forthwith raised." Here, you see, our governour says he shall execute martial law throughout the province, that is, (as we all understand it in this province,) he will suspend the whole civil government of the province, and put it intirely under military, or arbitrary, government, until the publick peace and tranquillity is restored. And he considers the militia as the proper instruments to be employed in executing martial law, instead of considering martial law as a proper instrument for governing the militia, as I now see that he ought to have done : for he declares, *That, to the end that he may execute martial law*

throughout the province, he shall order the militia to be raised. These are sad mistakes, that make our condition still more unfortunate than it would be by the fair execution of the late Quebec-act, disagreeable as it is to most of us. But I hope they will one day be set right.

ENGLISHMAN.

Of the exercise
of martial law
in the English
provinces of
North-Ame-
rica.

I hope so too: and, if they are not, I am persuaded the discontents, which you tell me now abound so much in the province, will not easily be removed. But now, if you please, we will leave the melancholy consideration of our own, poor, devoted, province, and inquire into the right of establishing martial law in the English provinces on this continent and in the West-Indies, where notions of English law and English liberty have been hitherto permitted to prevail.

In these provinces, (as no standing forces have, till of late, been kept up in them, and no acts of the British parliament have been made to regulate their militias,) the business of martial law is not so much a
matter

matter of mere speculation as it is in England; but it has sometimes been necessary to have recourse to it for the government of the militia, or other forces, which, in times of invasion or imminent danger, have been raised for their defence. And with this view it has been usual for the Crown to delegate its power of establishing martial law to the governours of the several provinces, either, once for all, by a clause in the charters of some of the provinces, or to each individual new governour by a clause in his commission under the great seal, in the other provinces, which have no charters. The clauses of this kind in the commissions of the governours of the provinces of Quebeck and New-York I have already recited to you. And it appears from them that this power of exercising martial law was considered as a necessary appendage to the power of raising, and training, and commanding the militia, which belonged to the governour as captain-general of the province: which shews that it has nothing to do with the people of the province at large, but relates only to that part of them who are called out and embodied as a militia, or tem-

Of the powers relating thereto delegated to the governours of provinces in their commissions of captain general and governour in chief.

porary army, for the safety of the province. And I presume the clauses relating to this subject in the commissions of the governours of other provinces are to the same effect with these.

Of the powers relating thereto that are contained in the charters of several colonies.

And in the charters they are pretty much the same, though not exactly in the same words. Those in the charters of Maryland, Connecticut, Rhode-Island, Pennsylvania, and Massachusetts Bay (which, I believe, are all the charters in North-America now in force, are as follows.

Two clauses concerning martial law in the charter of Maryland.

In the charter of Maryland (which was granted to Lord Baltimore and his heirs, by king Charles the 1st in the year 1632,) the clauses relating to the power of levying forces and exercising martial law are in these words.

The first clause.

*“ And, because in so remote a country, and
 “ situate near so many barbarous nations, the
 “ incursions as well of the savages themselves,
 “ as of other enemies, pirates, and robbers,
 “ may probably be feared, therefore we have
 “ given, and for us, our heirs and successors,
 “ do give, power, by these presents, unto the said*

“ now

“ now Lord Baltimore, his heirs and assigns;
 “ by themselves or their captains, or other their
 “ officers, to levy, muster, and train all sorts
 “ of men, of what condition soever, or where-
 “ soever born, in the said province of Mary-
 “ land for the time being, and to make war,
 “ and pursue the enemies and robbers aforesaid,
 “ as well by sea as by land, yea, even without
 “ the limits, of the said province, and (by
 “ God’s assistance) to vanquish and take them;
 “ and being taken, to put them to death by
 “ the law of war, or to save them, at their
 “ pleasure; and to do all and every other thing
 “ which unto the charge and office of a captain-
 “ general of an army belongeth, or hath ac-
 “ customed to belong, as fully and freely as
 “ any captain-general of an army hath ever
 “ had the same.

“ Also, our will and pleasure is, and, by The second
clause,
 “ this our charter, we do give unto the said
 “ now Lord Baltimore, his heirs and assigns,
 “ full power, liberty and authority, in case of
 “ rebellion, tumult or sedition, if any should
 “ happen (which God forbid) either upon the
 “ land, within the province aforesaid, or upon
 “ the

“ the main sea, in making a voyage thither,
 “ or returning from thence, by themselves, or
 “ their captains, deputies, or other officers, to
 “ be authorized under their seals for that pur-
 “ pose, (to whom we also for us, our heirs
 “ and successors, do give and grant by these
 “ presents, full power and authority) to exer-
 “ cise martial law against mutinous and sedi-
 “ tious persons of those parts, such as shall re-
 “ fuse to submit themselves to his or their go-
 “ vernment, or shall refuse to serve in the
 “ wars, or shall fly to the enemy, or forsake
 “ their ensigns, or be loiterers or stragglers, or
 “ otherways however offending against the law,
 “ custom, and discipline military, as freely
 “ and in as ample manner and form as any
 “ captain-general of an army, by virtue of
 “ his office, might, or hath accustomed to use
 “ the same.”

Remarks on
 the aforesaid
 clauses.

The first of these clauses relates to the power which the king hereby authorizes Lord Baltimore, and his representatives, to exert against foreign enemies, or invaders, and robbers; and the second to the power to be exercised over the inhabitants of Maryland itself

itself in cases of rebellion, tumult, and sedition, and more especially against such of them as, being under military command, shall commit military offences, such as *flying to the enemy, forsaking their ensigns, and the like offences against the law, custom, and discipline military*. This latter power is much the same in substance with the power of exercising martial law delegated to the governours of the provinces of New-York and Quebeck in the clauses I have already mentioned to you. But it is expressed in more words, and perhaps may have been meant to convey a more extensive degree of power than is conveyed by the words of those commissions, which are only, "*To execute martial law in time of invasion, or other times when by law it may be executed,*" and "*To execute martial law in time of invasion, war, or other times when by law it may be executed.*" But, if they were meant to convey to Lord Baltimore and his representatives such more extensive powers, they were not long permitted to produce that effect. For in the year 1650, (which was only eighteen years after the granting of the charter,) there was an act passed by the Assembly
of

An act of assembly was passed in Maryland in the year 1650 for regulating the exercise of martial law.

of Maryland, which ascertained, and restrained within reasonable bounds, the power of the proprietary, both with respect to levying troops and making war, and with respect to the exercise of martial law. This act is as follows. It is intitled, "*An act concerning the levying of War within this Province,*" and is expressed in these words.

The words of
the said act.

This assembly humbly prays that it may be enacted, And be it enacted by the lord proprietary, with the advice and assent of the upper and lower house of this present assembly, That, if the lord proprietary, or his heirs, or any deputy or deputies, lieutenant, or other chief governour or governours of this province shall, at any time hereafter, make any war out of the limits, or precincts, of this province without the consent and approbation of the general assembly of this province first had and declared, the freemen of this province shall be no way obliged, or compelled, against their consents, to aid, or assist, with their persons or estate, in the prosecution or maintenance of such war; but are, and shall be, discharged of all attendance, or supply, concerning,

ing, or in relation to, such war: any law, usage, or custom, to the contrary hereof in any wise notwithstanding.

II. And do further humbly pray that it be enacted; And be it enacted by the authority aforesaid; That no martial law shall at any time hereafter be exercised within this province but only in time of camp, or garrison, and that within such camp or garrison.

That martial law shall be exercised only in camps and garrisons.

III. And be it further enacted by the authority aforesaid, That all charges arising from time to time, by defence of the province against any invasion of any enemy, or enemies, or against any domestick insurrections, or rebellions, against the publick peace of this province, or the government established therein, and under the lord proprietary, and his heirs, lords and proprietaries of this province, shall be defrayed by this province by an equal assessment upon the persons and estates of the inhabitants thereof; any thing in this act, or in any other act, to the contrary in any wise notwithstanding. This act was afterwards confirmed among the perpetual laws of the province of Maryland, in the year 1676.

Of the manner in which the expences of defending the province shall be defrayed.

A remark on the aforesaid act of assembly.

By the second clause of this act of assembly, you see, the exercise of martial law is confined to those places, for which alone it is proper, to wit, *camps and garrisons*; and any power of extending it to other persons in the province, which might be pretended to be grounded on the general words of the above-mentioned clause of the royal charter, is effectually taken away and abolished.

Of the power of exercising martial law in the colony of Connecticut.

In the charter of the province, or colony, of Connecticut, which was granted by king Charles the 2d in the year 1662, the clause relating to raising troops, and making war, and exercising martial law, and to the delegation of the whole power belonging to a captain-general of an army, is in these words.

The clause of the charter of Connecticut relating to this subject.

And we do further, for us, our heirs and successors, give and grant unto the said governor and company, and their successors, by these presents, That it shall and may be lawful to and for the chief commanders, governors and officers of the said company for the time being, who shall be resident in the parts of New-England hereafter mentioned, and others inhabiting there, by their leave, admittance,

admittance, appointment or direction, from time to time, and at all times hereafter, for their special defence and safety, to assemble, marshal, array, and put in warlike posture, the inhabitants of the said colony;—and to commissionate, impower and authorize such person, or persons, as they shall think fit, to lead and conduct the said inhabitants;—and to encounter, expulse, repel, and resist by force of arms, as well by sea as by land, and also to kill, slay and destroy, by all fitting ways, enterprizes and means whatsoever; all and every such person or persons as shall, at any time hereafter, attempt, or enterprize, the destruction, invasion, detriment, or annoyance, of the said inhabitants and plantation;—and to use and exercise the law martial in such cases only as occasion shall require;—and to take or surprize, by all ways and means whatsoever, all and every such person or persons, with their ships, armour, ammunition, and other goods, as shall, in such hostile manner, invade or attempt the defeating of the said plantation; or the hurt of the said company and inhabitants;—and, upon just causes, to invade and destroy the natives or other enemies of the said colony.

The clause in
the charter of
Rhode Island
relating to the
same subject.

And in the charter of the colony of Rhode-
Island, which was also granted by K. Charles
the 2^d in the same year 1662, the clause for
this purpose is as follows. “ *And we do fur-
ther, for us, our heirs and successors, give
and grant unto the said governour and com-
pany, and their successors, by these presents,
that it shall and may be lawful to and for the
said governour, or, in his absence, the deputy-
governour, and major part of the said assist-
ants for the time being, at any time, when
the said general assembly is not sitting, to no-
minate, appoint and constitute such and so
many commanders, governours, and military
officers, as to them shall seem requisite, for
the leading, conducting, and training up the
inhabitants of the said plantations in martial
affairs, and for the defence and safeguard of
the said plantations; and that it shall and
may be lawful to and for all and every such
commander, governour, and military officer,
(that shall be so as aforesaid, or by the go-
vernour, or, in his absence, the deputy-go-
vernour, and six of the assistants, and major
part of the freemen of the said company, pre-
sent at any general assemblies, nominated, ap-
pointed*

pointed and constituted,) according to the tenor of his and their respective commissions and directions, to assemble, exercise in arms, marshal, array, and put in warlike posture, the inhabitants of the said colony, for their especial defence and safety;---and to lead and conduct the said inhabitants;---and to encounter, repulse, and resist by force of arms, as well by sea as by land, and also to kill, slay and destroy, by all fitting ways, enterprizes and means whatsoever, all and every such person or persons, as shall, at any time hereafter, attempt, or enterprize, the destruction, invasion, detriment, or annoyance, of the said inhabitants or plantations;---and to use and exercise the law martial, in such cases only as occasion shall necessarily require;---and to take and surprize, by all ways and means whatsoever, all and every such person and persons, with their ship or ships, armour, ammunition, or other goods, as shall in hostile manner invade, or attempt the defeating of, the said plantation, or the hurt of the said company and inhabitants;---and, upon just causes, to invade and destroy the natives, Indians, or other enemies of the said colony.

In

Remarks on
the aforesaid
clauses of the
charters of
Connecticut
and Rhode
Island.

In both these clauses the law martial is spoken of as a law to be exercised by the commanders of the militia of the said provinces, or the bodies of men assembled in military array for the defence of the said provinces, for the good government of those bodies while under such military command, and seems to have no relation to the other inhabitants of the said provinces who are permitted to continue at their own respective habitations. And in the first of these clauses the power of authorizing the said commanders to lead and conduct the said bodies of armed inhabitants, and to exercise martial law for the government of them, is given *to the chief commanders, governours, and officers of the said company for the time being*, that is, as I suppose, (for it is not a very clear expression,) to the governour of the colony, the deputy-governour, and the twelve assistants, who are mentioned in the former part of the charter, and are directed to be chosen by the assembly every year. These assistants to the governour in the colony of Connecticut answer pretty much to the councils of the provinces that are governed by the king's commissions: only, instead of being appointed

appointed by the Crown, they, together with the governour himself and the deputy-governour, are in that colony chosen annually by the assembly of the people. The power, therefore, of assembling the militia in the colony of Connecticut, and of appointing officers to command it and to exercise martial law over it, is granted by the charter of that colony to that body of men which answers to the governour and council in a royal government. In the second of the foregoing clauses, which is taken from the charter of Rhode-Island, the power of authorizing the said commanders to lead and conduct the said bodies of armed inhabitants, and to exercise martial law for the government of them, is given to the governour, council, and assembly, when the assembly is sitting, and, when the assembly is not sitting, to the governour and the major part of the ten assistants of the governour, who are mentioned in the former part of the charter, and are, together with the governour himself and the deputy-governour, directed to be chosen every year by the assembly; which governour and assistants answer to the governour and council in a royal government.

In

Of the charter of Pennsylvania.

In the charter of Pennsylvania there is no mention of the power of exercising martial law. Yet perhaps it may be considered as granted to William Penn, and his representatives, *by implication*, as an appendage, or necessary attendant, of the power of levying forces, and making war against the enemies of Pennsylvania, and exercising all the authority that belongs to the office of a captain-general of an army; which power is granted him in the words following. “*And, because*

The clause of the said charter which relates to the power of levying forces and making war.

in so remote a country, and situate near so many barbarous nations, the incursions as well of the savages themselves as of other enemies, pirates, and robbers, may probably be feared: Therefore WE HAVE GIVEN, AND, for Us, our heirs and successors, DO GIVE, power, by these presents, unto the said William Penn, his heirs and assigns, by themselves or their captains, or other their officers, to levy, muster, and train, all sorts of men, of what condition soever, or wheresoever born, in the said province of Pennsylvania for the time being;—and to make war, and pursue the enemies and robbers aforesaid, as well by sea as by land, yea even without the limits of the said province; and, by God's assistance,

ance, to vanquish and take them; and, being taken, to put them to death by the law of war, or to save them, at their pleasure;---and to do all and every other thing which unto the charge and office of a captain-general of an army belongeth or hath accustomed to belong, as fully and freely as any captain-general of an army hath ever had the same."

In the charter granted by king William and queen Mary in the year 1692 to the province of the Massachusetts Bay, (which is supposed to have been drawn up by the famous Lord Somers, and is considered as the most judicious and best-planned of all the American charters,) the clause concerning the power of assembling the militia of the province and exercising martial law is expressed in the words following, *And we do, by these presents, for us, our heirs and successors, grant, establish, and ordain, That the governor of our said province or territory, for the time being, shall have full power, by himself, or by any chief commander, or other officer or officers, to be appointed by him, from time to time, to train, instruct, exercise, and govern*

Of the charter of the Massachusetts Bay.

The clause of the said charter which relates to the power of raising the militia and exercising martial law.

the militia there ;---and for the special defence and safety of our said province or territory, to assemble in martial array, and put in warlike posture, the inhabitants of our said province or territory ;---and to lead and conduct them, and with them to encounter, expulse, repel, resist, and pursue by force of arms, as well by sea as by land, within or without the limits of our said province or territory ; and also, to kill, slay, destroy, and conquer, by all fitting ways, enterprises, and means whatsoever ; all and every such person and persons as shall, at any time hereafter, attempt or enterprize the destruction, invasion, detriment, or annoyance of our said province or territory ;---and to use and exercise the law martial in time of actual war, invasion, or rebellion, as occasion shall necessarily require ;---and also, from time to time, to erect forts ; and to fortify any place or places within our said province or territory, and the same to furnish with all necessary ammunition, provision, and stores of war, for offence or defence ; and to commit, from time to time, the custody and government of the same, to such person or persons as to him shall seem meet ;---and the said forts and fortifications to demolish at his pleasure ;

Of the exercise of martial law.

sure ;—and to take and surprize, by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition, and other goods, as shall in a hostile manner invade, or attempt the invading, conquering, or annoying of our said province or territory. Provided always, and we do, by these presents, for us, our heirs and successors, grant, establish, and ordain, That the said governor shall not, at any time hereafter, by virtue of any power hereby granted, or hereafter to be granted to him, transport any of the inhabitants of our said province or territory, or oblige them to march, out of the limits of the same, without their free and voluntary consent, or the consent of the great and general court or assembly of our said province or territory ; nor grant commissions for exercising the law martial upon any the inhabitants of our said province or territory, without the advice and consent of the council, or assistants of the same.

In this clause of the charter of the Massachusetts Bay, (which seems to have been drawn with more care and attention than the corresponding clauses of the other charters before-
C c c c c mentioned,)

A remark on the aforesaid clause of the charter of the Massachusetts Bay.

mentioned,) the governour is authorized to use and exercise martial law only in time of actual war, invasion, or rebellion, and even then not without the advice and consent of the council of the province.

A general view of the law relating to the power of establishing articles of war, or exercising martial law, in the British colonies in America.

I am therefore inclined to think that the law upon this subject in the British colonies in America is as follows. The king has delegated to the several governours of those provinces, either by his charters or his commissions, the power (which is inherent in the Crown according to the statute of the 13th of king Charles the 2d above-mentioned,) of assembling the inhabitants of them in warlike array, and training, marching, and commanding them for the defence of the province in time of actual war, invasion, or rebellion, and also, as a necessary attendant of the said power, the power of exercising martial law for the government of the inhabitants, or militia, so embodied. And, to prevent the abuse of this latter power under false pretences of imminent danger of invasion to the province, creating a necessity of calling out the militia, and establishing martial law for the

the government of them, the king has restrained the governours of the provinces of Connecticut, Rhode-Island, and Massachusetts Bay, in the above-mentioned clauses in their charters, from exercising martial law in the said provinces without the advice and consent of the assistants, or councils, of the same: and he has restrained his governours of Georgia in like manner by the 9oth instruction above-mentioned under his signet and sign-manual. And I presume, but cannot venture to assert, that he has restrained the governours of the other royal governments in America by like instructions from exercising martial law in their respective provinces without the consent of their respective councils.

It follows therefore that, in those provinces of America in which no provision has been made concerning it by acts of their own assemblies, the law martial may be legally exercised by the several governours, with the consent of the councils of the said provinces, in consequence of the power delegated to them by the Crown for that purpose by their commissions

The law martial can only be exercised in times of actual invasion or rebellion.

commissions or the charters of their respective provinces. But it can only be so exercised in those cases in which it is in its own nature legal, or in which the king himself may legally, (or might legally after the passing of the Petition of Right in the 3d year of king Charles the 1st,) exercise it in England, or might, if he were present in person in any province of America, exercise it in such province, that is, (as appears by the Petition of Right,) in the case of an actual invasion, or rebellion, in the province, when (according to Serjeant Ashley's expression) recourse cannot be had to the king's courts of justice.

FRENCHMAN.

The said restriction is of great importance to the preservation of publick liberty.

This restriction of the exercise of martial law in these provinces by the authority of *only* the governour and council, without the assembly, to times of *actual* invasion or rebellion, when recourse cannot be had to the king's courts of justice, seems to be essential to the preservation of publick liberty; since without it the governour and council of a province, in a royal government, where they were appointed by the Crown, might, under a pretended

a pretended fear of an invasion or rebellion, raise an army in time of peace, and bring it under compleat subjection to their will by the exercise of martial law, and afterwards make use of it to enslave all the other inhabitants of the province to their own arbitrary government, or that of the crown, of which they are the representatives. Nevertheless I conceive that there may be some circumstances, besides those of an actual invasion, or rebellion, in a province, in which it would be highly beneficial to it that the governour should assemble a part of the inhabitants, and train them to the use of arms, for some short space of time, (as, for instance, a month or two,) so as to render them fit for actual service against an enemy. Such, for instance, would be an apparent danger of an invasion from a foreign enemy, that was likely to take place very soon. In such a case the most zealous lover of liberty must acknowledge that the people of the province ought in prudence to prepare for their defence, and for that purpose to raise amongst themselves, and train to the use of arms, a temporary body of forces. And, perhaps, upon such an occasion

it

Yet in some cases it may be of advantage to a province to raise and exercise a body of troops before the province is actually invaded.

And, perhaps, on these occasions it might be convenient to exercise martial law.

Provision should therefore be made for these purposes by acts of the provincial legislatures.

it might be convenient, though not absolutely necessary, to establish some articles of war, or law martial, for the government of the said forces, while so embodied. On these occasions therefore I should think it would be right for the full legislature of the province, the governour, council, and assembly, to pass an act for this purpose, that is, to enable the governour to raise and arm a part of the inhabitants; and cause them to be trained and exercised in the use of their arms, and encamped, or marched to such places as he should think proper, in order to be ready and able to repel the apprehended invasion; and to keep them in this armed condition during a certain limited time for the defence and safety of the province; and during the same time to exercise martial law for the better government of them. But I should think that the martial law, or articles of war, which the governour would in such case be permitted to exercise, ought not to be left to his sole choice and appointment, but should be chosen and established by the act of assembly that enabled the governour to exercise them. Some such acts of assembly as this seem necessary to the safety of these provinces.

E N G

ENGLISHMAN.

I think they would indeed be very useful. And I observe that something of this kind has been done in the island of Jamaica. For there I have found, upon looking into the collection of their laws, that this affair of martial law has been settled by an act of the whole legislature of the island, to wit, the governour, council, and assembly; and this so long ago as the year 1681, which was the first year of their having an assembly in that island. The act, I mean is Number 24 in the Collection of the Laws of Jamaica published at London in the year 1737, page 29, and is intitled "*An act for settling the militia.*" In this act there is a clause for establishing articles of war, or martial law, for the better government of the officers and soldiers of the said militia during the time they are in arms, which is in these words; "*And it is further enacted and ordained by the authority aforesaid* [that is, by the authority of the governour, council, and assembly of the province,] *That, during the time the said officers and*

VOL. II. D d d d *soldiers*

The power of levying forces, and exercising martial law, in Jamaica, has been regulated by an act of the governour, council, and assembly, of that island, passed in the year 1681.

The clause of the said act which relates to martial law.

soldiers are in arms, they shall observe and keep all and every of the laws and articles of war, and give all due obedience to their superiour officers: which laws and articles the commander in chief, with the advice of a general council of war, is to make and establish; and the commanders of the several regiments to give out copies of the said articles unto their respective officers, that the same may be publickly read once every six months unto the soldiers, while they are in arms, that all persons may the better know and observe their duties." This is the 11th clause of the said act. And in the 16th clause of it a power is given to the governour to call a council of war upon the appearance of any publick danger, or invasion, and, with their advice and consent, to cause the articles of war, or law-martial, to be proclaimed, and the militia of the island to be collected together and governed according to the said articles, for the defence of the said island. This clause is expressed in these words; "*And be it further enacted by the authority aforesaid, That, upon every apprehension and appearance of publick danger or invasion, the commander in chief*

The clause of the said act which determines the occasions on which martial law shall be established.

chief do forthwith call a council of war, and, with their advice and consent, cause and command the articles of war to be proclaimed at Port-Royal and Saint Jago de La Vega; from which said publication the martial law is to be in force.—That then it shall and may be lawful for the said commander in chief to command the persons of any of his Majesty's liege people, as also their negroes, horses, and cattle, for all such services as may be for the publick defence; and to pull down houses, cut down timber, command ships and boats; and generally to act and to do, with full power and authority, all such things as he and the said council of war shall think necessary and expedient for his Majesty's service and the defence of the island." Here we see that both the power of determining upon what occasions martial law, or articles of war, shall take place in the island of Jamaica, and the power of framing the articles of war which are at those times to be observed, are vested in the governour and the council of war to be called by him, by an act of the whole legislature of the island, to wit, the governour, council, and assembly: which is a method of settling

Great powers which may then be exercised by the commander in chief.

Two good effects, which result from the aforesaid act.

this affair that must, as I conceive, be attended with two very good effects. In the first place, it precludes all possibility of doubt concerning the legality of the establishment of martial law in that island, when it is established according to the directions of this act. And in the second place, it enables the governour to make timely provision for the defence of the island, by raising the militia, and training them to the use of arms, some reasonable time before an invasion, or rebellion, has actually taken place in the island, which are the only occasions upon which, by the mere common law, as declared in the Petition of Right, it would be allowable to exercise martial law.

Yet, perhaps, it would have been still better for the inhabitants of the island of Jamaica, if both the power of determining the proper occasions for assembling the militia, and that of establishing articles of war for the government of it when assembled, had been reserved by the general assembly to themselves.

These are considerable advantages resulting from the foregoing act. Nevertheless I should be inclined to think that it would have been still better for the inhabitants of the island of Jamaica, if their assembly had taken the course you recommend, and, instead of enabling the governour, (with the consent of a council of war to be by him called for the purpose,) to determine when the militia should

should be called out, and martial law established, and also to frame and constitute the martial law, or articles of war, which were at those times to be observed, had reserved both these powers to itself; so that the militia could never be called out, nor martial law be exercised, (except in times of actual invasion or rebellion,) without a previous act of the whole legislature of the island, the governour, council, and assembly, directing that it should be so called out, and limiting the time during which it should continue in arms, and appointing the very articles of war by which it should be governed during such time. And the like acts of assembly ought, in my opinion, to be passed on the like occasions in all the other provinces of America.

As to times of actual invasion and rebellion, they seem to be cases that hardly admit of the meeting of the assembly of a province to join with the governour and council in passing such acts as we have been speaking of, for the necessary defence of the province. In these cases therefore it may be reasonable that the power of assembling the militia of the province

An exception
of times of
actual invasion
or rebellion.

province in arms, and establishing martial law for the government of them, (great and formidable as it is,) should be exercised by the governour with the consent of the council of the province only, agreeably to the directions of the charter of the Massachusetts Bay, and to the above-mentioned 90th instruction to the governour of Georgia. But these cases can hardly ever happen: because it is almost impossible that a province should be invaded by a foreign enemy, without either some previous notice to the inhabitants that such an invasion was meditated against them, or their having reason to think that it was likely to be undertaken against them; in either of which cases it would be easy for the governour to convene the assembly of the province, and, with their concurrence, to pass such necessary acts as we have just now mentioned, for raising and arming the militia of the province during a certain limited time, and establishing some proper articles of war, or martial law, for the good government of them during the said time.

I have

I have only one observation more to make upon this subject; which is, that;—since martial law relates only to the government of an army, or militia, and not to the people at large;—and it can be lawfully established, by the king's single authority, only in times of actual invasion and rebellion, when recourse cannot be had to the king's courts of justice, and not in times of common war, when there is no such invasion or rebellion, nor even in cases of imminent danger of an invasion or rebellion;—I say, that, since the use of martial law, by the king's single authority, is legally subject to these restrictions; and yet does not seem to be generally understood to be subject to them, at least, not in this province; it would be highly expedient, and tend greatly to the removal of jealousies and suspicions from the minds of the inhabitants of his Majesty's provinces in America, if these restrictions were distinctly expressed in the commissions of the governors of those provinces, so as to leave no possibility of doubt upon the subject. This might be done by new-modelling the clause of the governor's commission whereby the power

It would be highly expedient to express distinctly in the king's commissions to his governors of provinces, the legal restrictions upon the exercise of martial law, which have been above explained.

power of levying forces and establishing martial law is delegated to him, in some such manner as the following.

A proposed new draught of the clause in the said commissions which relates to the levying of forces and establishment of martial law.

“ And we do hereby give and grant unto you, the said A. B. full power and authority, by yourself or by your captains and commanders by you to be authorized, *in all times of actual invasion of our said province, or of rebellion within the same, with the advice and consent of our council of the said province first had and obtained thereunto, and at all other times with the advice and consent of both the council of our said province and the general assembly of the representatives of the freeholders of the same first had and obtained thereunto,* full power and authority to levy, arm, muster, command, and employ, all such persons, residing within our said province, *as either are bound by the laws of our said province to serve under such command upon the said occasions, or are qualified by the said laws, and also willing, to serve under the same ;—and, as occasion shall serve, them to march, embark, or transport, from one place to another within our said province, for the resisting and with-*
standing

standing of all enemies, pirates, and rebels, both at land and sea ;——and, *with the advice and consent of our council of the said province and the general assembly of the same first had and obtained thereunto, but not otherwise*, to transport such forces to any of our plantations, or provinces, in America, if necessity shall require, for the defence of the same against the invasion, or attempts, of any of our enemies ;——and such enemies, pirates, and rebels, if there should be occasion, to pursue and prosecute in, or out of, the limits of our said province, and, (if it shall so please God,) them to vanquish, apprehend, and take ; and, being taken, according to law to put to death, or keep and preserve alive, at your discretion ;——and, *for * the better government of the said forces during the time they shall continue in arms*, to establish and execute such law-martial, or articles of war, *over the same as shall have been appointed by the laws of our said province, (made by our governours, councils, and assemblies of the same,) to be used and executed on such occasions, or, in default*

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* N.B. The words printed in Italicks in this proposed draught of a new clause on this subject are the new ones, which are not to be found in the clauses relating to it in any of the commissions of governours of provinces which I have happened to see.

of such appointment, as shall be appointed, or established, by yourself with the advice and consent of our council of the said province;— and to do and execute all and every other thing and things, which to the office of our captain-general and governour in chief of our said province doth, or of right ought to, belong.”

Such an amendment of the clause in the governour's commission which delegates to him the authority of a captain-general of an army, and authorizes him to establish martial law in the province of which he is made governour, would, as I imagine, be very agreeable and satisfactory to his Majesty's subjects in all the royal governments in America.

FRENCHMAN.

I am sure it would be so to the inhabitants of this province; who have all been greatly surprized and alarmed at the late proclamation of the governour on the 9th of last * month, for the establishment of martial law; which most people here (as far as I can observe) seem to consider as a total suppression, or suspension, of all the laws of the province,

both

2 June, 1775.

both French and English, and a substitution of the laws of natural equity and temporary state-policy, (to be administered according to the discretion of the governour and the persons he shall delegate for that purpose,) in their stead; in short, as a temporary exchange of *the laws and government of England* for *the laws and government of Morocco*, arising from the supposed danger of an invasion of the province by the rebels in the neighbouring English provinces. But I am glad to find that, according to the true meaning and extent of martial law, as allowed by the law of England, our condition is not quite so bad as we have supposed it: and I am much obliged to you for the trouble you have taken to gratify my curiosity on this subject. I have now nothing further to ask concerning it.

ENGLISHMAN.

I am glad to find that what I have said upon this subject has given you satisfaction. For, if you had asked me any thing further about it, I protest I should not have known what to answer you. For our law-books in general afford us but little light concerning it,

The English law-books treat very sparingly of martial law; and

E e e e e 2

even

more especially with respect to the colonies in America.

even with respect to England itself; and they seem to be absolutely silent upon it with respect to the colonies in America. For I do not remember a single passage in any of them that mentions the king's power of establishing martial law in these colonies, or of delegating to his governours, or governours and councils, the power of so doing. I have therefore been forced to have recourse to arguments of analogy, derived from his power of establishing it in England, in order to discover and determine how far he has a power to establish it in America; and to the charters of some of the colonies and the commissions to the governours of others, to determine how far he, or his predecessors, have thought fit to delegate the said power to the governours, or to the governours and councils, or (as in the case of Rhode-Island, while the assembly is sitting,) to the governours, councils, and assemblies, of the said colonies. There is, however, after all that has been said, a disagreeable kind of obscurity and uncertainty still remaining upon this subject, which I confess myself unable to remove. Nor do I think it a matter intirely without doubt, that the king
can

This leaves a considerable degree of uncertainty on this subject.

can in any case whatsoever, even in that of an invasion, or a rebellion, either establish martial law by his single authority in England, or delegate a power of doing so to his governour, or governours and councils, in the American colonies; seeing that the prohibition of the issuing commissions to exercise martial law in the famous Petition of Right above-mentioned is expressed in these very general words, which contain no exception whatsoever; “ *And that hereafter no commissions of like nature, may issue forth to any person, or persons, whatsoever to be executed as aforesaid; lest, by colour of them, any of your Majesty's subjects be destroyed, or put to death, contrary to the laws and franchises of the land.* ” — But now, I hope, we may have done with this subject; and may even, if you have nothing further to propose, put an end to this conversation on the state of these American colonies. For, I think, we have gone pretty fully through all the particulars we proposed to discuss together, which were the grounds and reasons of the two last measures which I had mentioned as expedient to be taken by Great-Britain in order to a permanent

It does not seem to be quite certain that the king may, by his single authority, establish martial law, or articles of war, in any cases whatsoever, even in those of actual invasion and rebellion.

End of the reflections on martial law.

manent reconciliation with these colonies; to wit, 1st, the relieving them from the apprehensions of having bishops imposed upon them, and the Church of England established amongst them, by the authority of the British government, without the concurrence of their own assemblies; and, 2dly, the amendment of the constitution of the legislative councils in the several royal governments in America, by increasing the number of their members from 12 to at least 24, and enabling them to hold their said offices of counsellors, (when once appointed to them by the Crown,) during their lives and good behaviour. I do not recollect that we had proposed to enter upon any other subject of discourse.

FRENCHMAN.

It is very true. You have acquitted yourself of your promise to me by explaining the grounds and reasons of those two last measures for reconciling Great-Britain and America. But I have still one more question to trouble you with, relating to these American colonies, which I hope you will not decline

answer. It has arisen in my mind in the course of this conversation, and in consequence of what I have heard you say concerning the delegation of the king's authority to his governors of provinces by his commissions under the great seal. You allow that the king may delegate to the governor, council, and assembly of an American colony a power to make laws for the peace, welfare, and good government of it; and you observe that he does *in fact* delegate such a power to them in every governor's commission that passes the great seal. And yet you seem to think he cannot legally exercise such a power himself, nor delegate it to the governor only, or to the governor and council only, without the assembly. Now it seems to me that, if the king of Great-Britain is not possessed of the full power of making laws for the government of the American colonies, he ought not to be able to delegate such a power to any body, or bodies, of men, in the said colonies, whatsoever, and consequently that his delegation of such a power to the governor, council, and assembly of a province ought to be considered as illegal and void: and, on the other

A difficulty concerning the king's right of delegating a legislative authority to the governors, councils, and assemblies of the American colonies.

other hand, if he is possessed of such a power, it should seem that he ought to be able to delegate it to whomsoever he thinks fit, and consequently to the governour and council without an assembly, or even to the governour alone. The contrary system, which you seem to have laid down, appears to me a kind of inconsistency, or political paradox, which I beg you would explain.

ENGLISHMAN.

A solution of
the said diffi-
culty.

The solution of this difficulty depends on that part of the king's prerogative by which he is impowered to erect and constitute political bodies, or corporations. These corporations are little communities, or assemblies of persons, united together for the purpose of trade, or some other lawful purpose, and subordinate to the great community of the kingdom, and subject to all the laws of that great community, both those which are already in being at the time of the creation of the corporation, and those which are afterwards to be enacted. Now, by the constitution of the English government, the king has the power of creating, or incorporating, such subordinate communities.

communities. And, as some peculiar regulations, somewhat different from the general laws of the kingdom, but not considered as repugnant to them, may become necessary to the welfare of such lesser communities, the king has the power of authorizing such communities to make such laws for their own welfare and good government;---I use the expression of *authorizing them to make such laws* rather than the expression of *delegating to them the power of making such laws*, because, I think, it better expresses the nature and intent of the king's acts on those occasions. For, as the king never had in himself alone the power of making such laws for such communities, he cannot with propriety be said to delegate such a power to them. But the validity of the laws that are so made by such inferior communities (which are usually called *by-laws*) results principally from their being made by those communities themselves, or with their own consent, or *that* of the common council chosen by themselves. And by the help of this consideration the whole doctrine concerning the legislative authority of the kingdom at large and the legislative

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Of the legislative powers of subordinate communities, or corporations.

The true ground of the validity of the laws made by such corporations.

authority of these inferiour communities, and the share the king has in both these authorities, may be made consistent, and will stand as follows. The king is not possessed of the sole legislative authority over the whole kingdom ; but he is possessed of it in conjunction with the parliament, or the body of the representatives of the people ; that is, the king and the representatives of the whole body of his subjects together may make laws for the whole kingdom. And in the same manner the king is not possessed of the sole legislative authority over a subordinate community erected in the kingdom ; but he is possessed of it in conjunction with that community itself, so that he and the said community together may make laws for such community, or he may authorize the representatives chosen by such community to make such laws : yet always under this restriction, that the laws to be made by such communities shall not be contrary, or repugnant, to the laws of the great community, of which they make a part, or of the kingdom at large. In both cases the consent of the parties who are to be bound by the laws, when made, or (which comes to

to the same thing,) that of their elected representatives, is the essential circumstance from which the laws derive their validity. This I take to be the law of England concerning the legislative powers exercised by corporations in England, such as the cities of London, Bristol, Norwich, Exeter, and many others. And the same law holds good with respect to the American colonies, or provinces; of which some are express corporations, that have been made so by charters of a similar nature to those of some of the corporation-towns in England, and others are a sort of corporations by implication, having the principal properties of a corporation, tho' not the name; and all have a reference to the laws of England, as the foundation of their political constitution. Thus, for example, the proprietary government of Maryland is declared in the charter to Lord Baltimore to be established in imitation of the bishoprick or county-palatine (as it is called,) of Durham in England, in these words. "*We do also grant and confirm unto the said Lord Baltimore, his heirs and assigns, all islands and islets within the limits aforesaid, &c. with the*

Fffff 2 fishing

Extension of
the foregoing
doctrine to
the American
colonies.

Maryland.

fishing of all sorts of fish, whales, sturgeons, &c. within the premisses, &c. And moreover all veins, mines, and quarries, &c. within the limits aforesaid: And furthermore the patronage and advowsons of all churches, &c. together with licence and power to build and found churches, chapels, and oratories, in convenient and fit places within the premisses, &c. Together with all and singular the like and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, royal rights and franchises, of what kind soever, temporal, as well by sea as by land, within the country, isles, islets, and limits aforesaid: To have, exercise, use, and enjoy the same as amply as any bishop of Durham within the bishoprick, or county-palatine, of Durham in our kingdom of England, hath at any time heretofore had, held, used, or enjoyed, or, of right, ought, or might, have had, held, used, or enjoyed."

Connecticut:

The charter of the colony of Connecticut contains the following words of reference to the constitutions of corporation-towns in England, "*according to the course of other corporations within this our kingdom of England.*"

And

And the same words are also used in the charter of the colony of Rhode-Island. And both these three charters and those of Pennsylvania and Massachusetts Bay, and the commission of the governor of New-York and that of the governor of Quebec before the late Quebec-act, (which has revived the French law in this province in all matters of property and civil rights,) and, I believe, those of the governors of all the other provinces in America, direct, that the laws to be passed in the said provinces, by the governors, councils, and assemblies of the same, shall be *not contrary and repugnant unto, but as near as may be agreeable to, the laws of the realm of England*. The American colonies are therefore to be considered as so many lesser societies, or communities, that are parts of the great community composed of all the subjects of the crown of Great-Britain, and consequently are subject to the general legislature of the said great community, that is, to the British parliament, but which, nevertheless, have, for their more convenient government, been incorporated by the king, or formed into separate political bodies, with a power

Rhode-Island.

Pennsylvania.

Massachusetts
Bay.

New-York.

Quebec.

The true idea
of the political
constitution of the
American colonies.

Of the restriction to which their power of making laws for their own government is subject.

Declaration of the Stat. 7 & 8 Wil. 3, cap. 22, upon this subject.

power of making laws and regulations for themselves in subordination to the general laws of the great community itself of which these societies are a part, that is, to the laws of England. This restriction upon the legislative powers of the American colonies, by which they are thus forbidden to make laws repugnant to the laws of England, is certainly somewhat vague and loose, and consequently liable to be evaded. But it must, at least, be understood to prohibit such laws in the American colonies as are contrary to acts of the English parliament that expressly relate to America. And, agreeably to this construction of it, the statute of the 7th and 8th years of king William the 3d, cap. 22, declares the law upon this subject to be as follows; to wit, "*That all laws, by-laws, usages, and customs, which shall be in practice in any of the plantations, repugnant to any law made, or to be made, in this kingdom, [of England] relative to the said plantations, shall be utterly void and of none effect.*"

This is the best answer I can give to the ingenious difficulty you have suggested concerning

cerning the king's power of delegating the power of making laws to the governours, councils, and assemblies of the American colonies, although he is not legally possessed of the power of doing so himself. At the same time I freely acknowledge that I think it would have been wiser and better to have originally settled these American governments by acts of parliament, instead of royal charters and commissions, to the end that no such difficulties as that you have just now suggested, nor others that have arisen of late years concerning the political constitution of these provinces, and their relation, and subordination, to Great-Britain, might have been possible. Such a precaution, taken 100, or 150, years ago, might, possibly, have prevented the late disputes between Great-Britain and these colonies, and the destructive civil war to which they have given rise, and which seems now to be begun between the two countries.

It is to be lamented that the governments of the American colonies were not originally settled by acts of parliament.

F R E N - C H M A N .

I am obliged to you for this answer to my difficulty, which seems tolerably satisfactory.

But

But yet I most readily agree with you in thinking it would have been better to prevent this difficulty many years ago by calling in the aid of the English parliament to join in the delegation of these legislative powers to the several American colonies, and in the settlement of all the other particulars of their political constitutions. *That* only could have thoroughly prevented all the doubts and difficulties that have agitated men's minds, and disturbed the tranquillity of these colonies for these twelve years past, and which now seem likely to end in war and blood-shed. But now the great object of all good men ought to be to prevent the further progress of this contest, which, if it goes on, must bring so much ruin on both parties. And the most probable means of effecting this good end seems to be, for Great-Britain to hold out to these colonies some fair and honourable plan of reconciliation, that may remove from the minds of the Americans the terrors under which they now lie concerning the preservation of their liberties. And this effect, I should hope, would be produced by the plan you have explained to me in this, and our former,

End of the remarks on the legislative powers of the American colonies, begun in page 767.

former, conversation on this subject. This plan I have perfectly understood and approved of, as you have mentioned and explained the several parts of it. But, as the discussion of it has run into considerable length, and we have made frequent digressions from it to collateral and incidental subjects, I should be obliged to you, if, before we part, you would favour me with a short recapitulation, or summary, of the several articles of it, but without the reasons of them, or with the slightest mention of those reasons possible, and with no mention at all of the subjects to which we have digressed, only just to assist my memory in recollecting the plan itself.

A recapitulation of the articles of the plan of reconciliation between Great-Britain and her American colonies, that is recommended in the course of this and the former dialogues.

ENGLISHMAN.

This I can easily, and will readily, do, as it seems to be a very proper step for the convenience of us both, after so long and various a conversation.

In the 1st place then I would propose, That the Quebeck-act should be repealed, and the king's proclamation of October, 1763, be thereby revived with respect to this pro-

To repeal the late Quebeck-act, and revive the king's proclamation of October, 1763.

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vince,

vince, and the extent of the province (which is now immoderately great,) be reduced to what it was before the said Quebec-act.

A remark on the prodigious enlargement of the province of Quebec by the said act.

This enlargement of the province was made at that time in a very hasty manner, and without examining any witnesses before either house of parliament to prove the inconveniences resulting from the former more moderate extent of it, as settled by the proclamation of October, 1763, though it was alledged in the pre-amble of the act, *that certain parts of the territory of Canada, where sedentary fisheries had been established and carried on by the subjects of France, inhabitants of the said province of Canada, under grants and concessions from the government thereof, were annexed to the government of Newfoundland, and thereby subjected to regulations inconsistent with the nature of such fisheries.* Though this was alledged in the pre-amble of the bill, no proof was given to either house of parliament that such fisheries had ever existed there, nor that any regulations had been made in the government of Newfoundland that were inconsistent with the nature of such fisheries. That there were formerly such fisheries

fisheries, (which the French call *des pèches sédentaires*, and the English call *shore-fisheries*,) established and carried on on the coast of Labrador, or the northern coast of the gulph of Saint Lawrence, for the catching of seals, you and I indeed know very well ; though, probably, many of the members of both houses of parliament, who were persuaded to vote for the Quebec-act, did not know it ; or, if they did, it was not from testimony delivered at their bar. But what those regulations of the government of Newfoundland were, which were said to be inconsistent with the nature of such fisheries, I protest I do not know to this hour, nor whether there were any such regulations. But, if there were, it does not seem to have been a sufficient reason for altering the boundaries of the two provinces, and placing the coast of Labrador in the province of Quebec ; because those regulations might have been altered by the parliament, or by the government of Newfoundland, with respect to that coast, so as not to interfere with the said fisheries. But this is a matter which ought, in my opinion, to be fully inquired into by means of the testimonies of sea-officers ac-

acquainted with Newfoundland and the gulph of Saint Lawrence, and with the fisheries and trade carried on in those parts, and by the testimony of merchants acquainted with the same subjects. And, if, in consequence of such full inquiry, it shall appear to be highly expedient to annex the coast of Labrador to the government of Quebeck rather than to the government of Newfoundland (though it is nearer to the latter than to the former, and seems therefore, in point of situation, more fit to be united to it,) it might then be proper to enlarge the former extent of the province of Quebeck, as settled by the king's proclamation in October, 1763; by the addition of the coast of Labrador, which by the said proclamation was made part of the government of Newfoundland: but by no means to put all the interiour part of North-America into the province of Quebeck, as is done in the late Quebeck-act; which is considered by the inhabitants of all the English colonies behind which such interiour part of North-America extends, as drawing a line of circumvallation round them, to be filled with persons habituated to popery and slavery, who
will

will hereafter be employed to reduce the said English colonists to the same miserable condition with themselves.

Secondly, After thus repealing the Quebec-act, and reviving the king's proclamation of October, 1763, and reducing the province of Quebec to a reasonable and moderate extent, capable of being governed by an assembly in pursuance of the promise in the said royal proclamation, it would be proper to ascertain the laws of the province. This should be done by expressly mentioning and confirming the Petition of Right, the *Habeas corpus* act, the Bill, or Declaration, of rights in the first year of king William and queen Mary, and perhaps a few other statutes that are singularly beneficial and favourable to the liberty of the subject, and then by confirming, in general terms, the rest of the laws of England, both criminal and civil, excepting the penal laws against the exercise of the popish religion, which should be declared to be (what they have always been understood to be,) utterly null and void with respect to that province, and excepting also the laws relating to the tenure of land,

the

To ascertain the laws of the province of Quebec, by establishing the laws of England in it, with certain specified exceptions.

The laws of England that should be so excepted.

the manner of conveying it, and the laws of dower and inheritance, at least with respect to the children of marriages already contracted, or which shall be contracted before a given future day, and declaring that upon these subjects the former French laws of the province should be in force.

Of the laws of England which exclude Papists from places of trust and profit.

But the laws of England which disqualify papists from holding places of trust and profit ought still to be continued in the province, though the penal laws should be abolished; because the former laws are not laws of persecution, but of self-defence. Yet the king might, if he pleased, extend his bounty to those persons of that religion who have lately had offices bestowed on them in the province, (which upon such a restoration of the English laws they must give up,) and to such other persons of the Roman-Catholick religion as he thought fit, by granting them pensions. But in this part of my plan I can hardly expect to have your approbation, as you are yourself a Roman-Catholick.

FRENCH.

FRENCHMAN.

Though I may not, perhaps, intirely agree with you in thinking such an exclusion of Roman-Catholicks from offices of trust and profit in this province just or necessary, yet, if the British government should think it so, for the sake of preserving an uniformity of political conduct throughout all its dominions by every where discountenancing those persons who acknowledge a subjection to a foreign jurisdiction, (which, according to what I collect from your discourse, seems, till the late Quebec-act, to have been considered as a fundamental maxim of policy in the British government ever since the accession of queen Elizabeth,) I say, if the British government should think such exclusion a necessary piece of policy, I will venture to say it would be a safe one, or would give no dangerous offence to the people of this province. The noblesse of the province, (who are an inconsiderable handful of men that have no influence over the rest of the people, but are rather objects of their dislike,) might, perhaps, be offended at it; and a few lawyers and notaries in the

towns

The revival of those laws in the province of Quebec would not give any dangerous offence to the people of it.

towns of Quebec and Montreal, who, though not of the noblesse, may think they have some chance of obtaining some of those offices of trust and profit relating to the administration of justice. But the bulk of the people, that is, the yeomanry of the province and the merchants and tradesmen in the towns of Quebec and Montreal, would be very indifferent about it; as they were before the late Quebec-act, when the laws that directed such an exclusion were in force. Nay, I believe, a great part of the people of this province would even be glad of a revival of those excluding laws, (though, perhaps, without thinking them just, or considering whether they were just, or not,) on account of its effect, which would be to deliver the Canadians from their present subjection to French, or Canadian, judges and justices of peace, and place them again under the power of English magistrates of the same kind, whose treatment of them they have always been better pleased with than with that which they have received from magistrates of their own country. This, (though it might seem strange to persons unacquainted with this province,)

vince,) you know to be the truth. And the reason of it is simply this; that the English magistrates have been more affable, and impartial, and, as I may say, equal in the exercise of their judicial authority, towards all persons (of what rank and condition soever,) who have had occasion to apply to them for justice, than the French magistrates. — However, if these excluding laws were to be revived, I should think it would be both just and politick to make some provision for those Roman-Catholicks in the province who, in consequence of the late Quebeck-act, have been invested with offices of trust and profit, which they would, in such case, be obliged to relinquish.

ENGLISHMAN.

I intirely agree with you in this opinion; and should even have no objection to their being permitted to continue in their offices notwithstanding their religion, by virtue of a special clause in the new act of parliament, by which they should be authorized by name to continue in their said offices, provided no Roman-Catholicks should hereafter be ap-

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pointed to such offices. For I would never wish to see the smallest hardship, or seeming hardship, done to any person in making the changes that seem necessary for the welfare of the province. On these occasions I am always ready to apply the maxim of the English law, that *Quod fieri non debuit, factum valet*; and am only desirous that a repetition of the same wrong steps should be avoided.

Having thus restored the laws of England in this province with respect to civil matters as well as criminal, excepting only those few heads of law, relating to landed property, in which it might be convenient to permit the French laws to continue, it would in the next, or 3d, place, be proper to abolish the seigneurial jurisdictions in Canada, for the satisfaction of the great body of the freeholders of the province. If this cannot be done consistently with justice and the terms of the capitulation granted by Sir Jeffery Amherst in September, 1760, without giving the seigniors a pecuniary compensation for the loss of these jurisdictions (though I incline to think it might,) such pecuniary compensa-
tions

To abolish the
seigneurial ju-
risdictions in
Canada.

tions ought to be given them. Ten thousand pounds sterling would be more than sufficient to make these compensations in a large and ample manner.

In the 4th place, Having thus ascertained the laws of the province of Quebeck, it would be proper to provide for the convenient administration of justice in it, by erecting proper courts of justice in it, with power to summon juries when the parties, or either of them, desired it, to try the matters of fact that were contested in the cause, as in England. Only it might, perhaps, be convenient to permit the majority of the jury to determine the verdict, instead of requiring all the jurymen to be unanimous, or, rather, to say they are unanimous, when they really are not so; which seems to be compelling them to commit the crime of perjury; and it might likewise be convenient to make the parties, or party which desired to have a jury, pay them the moderate sum of five shillings sterling a-piece for their attendance, to induce them to attend with cheerfulness. This business of settling the courts of judicature in the

To provide
for the con-
venient admini-
stration of
justice in Ca-
nada.

province of Quebec is a matter of considerable nicety and difficulty, and ought, therefore, to be done in England by the advice of the ablest lawyers that are members of his Majesty's privy-council, and afterwards to receive the sanction of an act of parliament, and not to be left to the management of the governour and legislative council, or other legislature, of the province, who are much less able to settle it in a manner that will be likely to give satisfaction.*

To constitute
a proper legislature in
the province
of Quebec.

Fifthly, To provide a competent legislature for the province of Quebec.

1st, A Protestant
assembly.

The best legislature that could be provided for it, would, as I believe, be a *Protestant Assembly*, chosen by the freeholders of the country, whether Protestants or Roman-Catholics.

* The best plan that I have been able to contrive, after much thought and pains, and frequent conversations with the most intelligent persons in the province of Quebec, both French and English, upon the subject, for the administration of justice in Canada, is contained in the *Additional Papers concerning the Province of Quebec*, published in the year 1776, and sold by Benjamin White, bookseller, in Fleet Street, pages 343—359.

The

The next best, I should be inclined to think, would be a legislative council consisting of Protestants only, and that should be established only for seven years; after which it might be hoped that the circumstances of the province, if they are not so at present, might become fit for the establishment of an assembly, in pursuance of the promise contained in the king's proclamation of October, 1763; of which neither the inhabitants of this province nor the government of Great-Britain ought ever to lose sight. And I conceive that all the members of such a legislative council ought to be made independent of the governour, so as to be neither removeable nor suspendible by him upon any occasion whatsoever, though they might be removed by the king by his order in council. Also they should be thirty-one in number, or perhaps more; and, at least, thirty years of age; and they should all be obliged to sign the ordinances for which they gave their votes, in order to make them cautious in the exercise of their great legislative authority. But their names should not be printed in the published copies of the ordinances, though signed to

adly, A Protestant legislative council.

to the original draughts of them kept amongst the records of the council. Also they should be paid the sum of forty shillings each, every time they attended the meetings of the council, in order to induce them to attend in considerable numbers; as the justices of the peace in England are intitled to a pecuniary allowance for attending the quarter-sessions of the peace, and the directors of the East-India Company for attending the meetings upon the affairs of the Company, and the members of the House of Commons in England are intitled to wages from their constituents for attending parliament, though now they forbear to demand them. But it should be provided that none of the members of this council should ever receive more than £.100 sterling in a year on this account, though the number of the meetings of the council at which they had attended should be more than fifty. And they should receive no general salaries from the Crown, not depending upon their attendances at the council: because such a practice can tend to nothing but to make them dependant on the Crown, and contemptible in the eyes of the people.

Also

Also the presence of at least 17 of them should be necessary to make a board, or to enable them to do business. They should be assembled by the governor by a publick notice in the *Quebeck Gazette* a fortnight before the day of their meeting; and they should be liable to be adjourned or prorogued, by the governor, whenever he thought fit. And every member of such council should have a right to propose, or bring in, a bill for a new law, or ordinance, as well as to assent to one brought in by the governor. But the governor should have a negative upon all such bills, after they had been passed by the majority of the council. And the legislative power of this council should be so far restrained that they should not be at liberty either to lay taxes of any kind on the people, or to make ordinances relative to religion. A legislative council constituted in this manner might, perhaps, be an useful instrument of government in this province for a few years, until it shall be thought convenient to establish an assembly in it.*

Next

* See a draught of an act of parliament, (that was prepared in the year 1772,) for establishing a legislative council

gally, A mixed
assembly,
composed of
Protestants
and Papists
indiscrimi-
nately.

Next to such a legislative council as this which I have just now described, consisting of Protestants only, a general assembly of the people, consisting of Protestants and Papists indiscriminately, seems to be the most proper legislature for the province. And to the establishment of such an assembly but few objections can now be made ; since, on the one hand, the English settlers in the province have declared that they are willing to acquiesce in the establishment of such an assembly, and, on the other hand, the king and parliament have (by passing the Quebec-act, and permitting Roman-Catholics to hold all sorts of offices, seats in the legislative council of the province, judicial offices, and even military commissions,) de-

council of this kind in the province of Quebec, in the "*Account of the Proceedings of the British, and other Protestant, inhabitants of the province of Quebec in North-America, in order to obtain a house of assembly in that province,*" published at London in the year 1775, and sold by Benjamin White, bookseller, in Fleet-Street, pages 50—74 ; with certain corrections of it, and additions to it, in the book mentioned in the last note, called "*Additional Papers concerning the Province of Quebec,*" in pages 232, 233, 234, and 486.

clared

clared that they consider the old opinion, "That Roman-Catholicks were not fit persons to be invested with authority under the British government," as ill-grounded with respect to the province of Quebec. For, certainly, if there is any hardship in excluding Papists from holding places of trust and profit in the province, there is a still greater hardship in excluding them from being chosen members of an assembly of the province,

And, whenever an assembly shall be established in this province, we have agreed in our first conversation that the most convenient and equitable manner of constituting it would be, to permit the inhabitants of every seigniory, or lordship, in this province, of the extent of six miles square, to send two members to it, one of which should be chosen by the seignior, or co-seigniors, of the said seigniory, and the other by the yeomen, or freeholders, of the same, who hold lands in it of the said seignior, or co-seigniors; and to permit larger seigniories to send more members of both sorts in proportion to their size. And these different kinds of members should

The most convenient and equitable manner of forming an assembly in the province of Quebec.

fit in different houses of assembly, and have a negative upon each others resolutions, as the houses of Lords and Commons have in England.*

To repeal the act of parliament of the year 1774, which altered the charter of the province of the Massachusetts Bay: and to provide, by resolutions of parliament, for the reasonable security of the charters of America for the time to come.

Sixthly, It would be proper to pass an act of parliament to repeal the act of the last year, 1774, by which the charter of the province of the Massachusetts Bay was altered; and at the same time to pass resolutions in both houses of parliament, "that, for the future, no charter of any American colony shall be taken away, or altered in any point, by the British parliament, without, either, a petition for that purpose to the two houses of parliament, or to the king's majesty, from the assembly of such colony whose charter is proposed to be taken away or altered, or a complaint made before the two houses of parliament of some great abuse of the privileges contained in such charter by the colony to which it has been granted, and a hearing of the said colony before the parliament, by their agents and counsel, in justification of themselves

* See The Canadian Freeholder, Dialogue 1, pages 47, 48,—55.

themselves against the charges contained in the said complaint."

Such a resolution passed by both houses of the British parliament, and made a standing order of them, would give the Americans a strong moral assurance that the privileges granted them by their charters would not be lightly and wantonly altered for the future upon the hasty suggestions of men little acquainted with their history and condition, and whose notions of government are very different from their own.*

Seventhly, I would propose, that a resolution should be passed by both houses of parliament, That, for the future, no tax, or duty, of any kind shall be imposed by authority of the parliament of Great-Britain upon his Majesty's subjects residing in those provinces of North-America in which assemblies of the people are established, until the said

I i i i i 2

provinces

To give the Americans satisfaction as to the article of taxation by the authority of the British parliament.

* N. B. An act to repeal the said act of the year 1774, which altered the charter of the Massachusetts Bay, was passed in March, 1778. But no such resolutions of the two houses of parliament as are here recommended, for the reasonable security of that and the other charters of the American colonies for the time to come, have been yet made.

provinces shall have been permitted to send representatives to the British parliament, excepting only such taxes, or duties, upon goods exported out of, and imported into, the said provinces, as shall be thought necessary for the regulation of the trade of the said provinces; and that, when such taxes, or duties, shall be laid by the British parliament on any of the said provinces, the whole amount of the same shall be disposed of by acts of the assemblies of the provinces in which they shall be collected, respectively.

I do not mean on this occasion to recommend to the publick the admission of representatives from the American colonies into the British House of Commons; because I have observed a disinclination in both the contending parties to adopt a measure of this kind, which otherwise I should think the easiest and most natural method of reconciling and uniting them. But what I here propose is to give the Americans satisfaction and security, by declaring a resolution not to tax them by the authority of the British parliament, (of which they have expressed so great
a dread

a dread and aversion;) and at the same time to save the honour and dignity of that supreme legislature of all the British dominions, by exhorting them,—not to give up their right and authority to tax the inhabitants of the American provinces, but only—to forbear the exercise of it till they have taken a step towards the amendment of the constitution of their own body, which the most strenuous advocates for their authority acknowledge to be agreeable to equity, in case it is their intention to use that authority for the purpose of taxing America. For the late Mr. George Grenville himself, and others of the most zealous defenders of the rights of the British parliament, have acknowledged that such an alteration in the constitution of the British House of Commons by admitting into it a reasonable number of members for the American colonies, (agreeably to what was done a hundred years ago in the case of the bishoprick of Durham,) would be perfectly constitutional and equitable, and could not well be refused to the Americans, if they were to desire it, and to declare a willingness to submit, in consequence of it, to the authority of parliament in all things in the same manner as the inhabitants.

bitants of Great-Britain. Until therefore an offer of this kind is made to the Americans and refused by them, it can be no derogation to the honour of parliament, but would rather be a proof of their equity and moderation, and therefore honourable to them, to forbear to exercise their authority over America in this delicate and dangerous business of taxation. And, as the people of Great-Britain seem hardly more disposed to make such an offer than those of America are to accept it, this forbearance of the exercise of the authority of parliament may be continued for many years to come, perhaps for ever, without any loss of honour to Great-Britain, and with great joy and satisfaction to the Americans.*

Eighthly,

* N. B. Since the supposed date of this dialogue, (which is in July, 1775,) this and more has been done by the British parliament for the satisfaction of the Americans in this matter of taxation, by the act of the 18th of Geo. 3, cap. 12, passed in March, 1778, which promises never to impose any internal taxes upon them at all. This may, perhaps, have been necessary in the distressed situation of Great-Britain at that time, after the loss of General Burgoyne's army at Saratoga, and the declaration of the French king in favour of the revolted colonies. But what is here proposed would probably have been amply sufficient to procure a reconciliation with America in July, 1775.

Eighthly, That all the quit-rents, and other royal dues, collected in the provinces of America, shall be appropriated to the maintenance of the civil governments in the same, and shall be employed in the payment of the salaries of the governours, and judges, and sheriffs or provost-marshalls, and coroners, and other officers of justice and civil government in the same, so as to lessen the taxes which it may be necessary for the governours, councils, and assemblies of the said provinces, to lay on the inhabitants of the same for the said purpose: and that a separate receiver and collector of the said quit-rents and other royal dues, be appointed by the Crown, or by the several governours of the said provinces respectively in every separate province, who shall hold his said office during the pleasure of the Crown, and his residence in the said province, and no longer, and who shall receive and enjoy such salary, or fees, or other emoluments, during his continuance in his said office, as shall be allowed by an act of the governour, council, and assembly of the said province. But the portions of the said quit-rents that shall be assigned to the governour,

To appropriate the quit-rents, and other royal dues, collected in the American colonies, to the maintenance of the civil governments of the respective colonies in which they are collected.

vernour, and judges, and other officers of civil government in the said provinces respectively, shall be such as his Majesty, in his royal wisdom, shall think fit to appoint.

No part of them should be paid to non-resident governours, or other officers of government.

Also it should be provided that no governour, judge, or other officer of the civil government of any such province, should receive any part of the salaries arising from these quit-rents, or other royal dues, during the time of his absence from the said province, or, after his return to the province, in consideration of his having held the said office during such absence; but that so much of his said salary, arising from the said quit-rents and other royal dues, as would have accrued to him in the said space of time, if he had resided during the same in the said province, shall be deemed to be forfeited by his said absence, and shall make a part of the publick treasure of the province, and be disposed of by the joint act of the governour, council, and assembly of the said province.*

Ninthly,

* See the Canadian Freeholder, Dialogue 1, pages 379—389.

Ninthly, The offices of secretary of the province, clerk of the council, register of deeds and patents, or clerk of the inrolments of deeds and patents, provost-marshal, or sheriff, commissary of stores, receiver-general of the king's revenue, coroners, clerks, or registers, of the courts of justice, naval officer, collector of the customs, comptroller of the customs, and all other offices of the civil government in every province, should be given to persons resident in the province, to be executed by themselves, without a power of making deputies; and the fees to be taken by them should be settled by acts of the governour, council, and assembly of the said province in which they are holden, and they should be holden during the pleasure of the governour, or of the king, as his Majesty, in his royal wisdom, shall think-fit, but should never be given by patents under the great seal of Great-Britain, to be holden during the lives of the patentees; and, much less, should they be granted in reversion: and they should be holden by separate officers, so that no two of them should be holden by the same person.

To regulate anew the offices of civil government in the provinces of America, which are now usually granted for life to persons resident in England, by patents under the great seal of England.



The present patentees of any of these offices should have compensations made to them for the loss of their patents by pensions for their lives payable out of the sinking fund.

To restore the duty of $4\frac{1}{2}$ per cent. upon goods exported from some of the West-India islands to its original destination, the maintenance of the civil governments of the islands in which it is paid.

Tenthly, The duty of four and a half per cent. paid upon goods exported from the island of Barbadoes, and from the Leeward Islands, and from some others of the West-India islands, should be restored by the Crown to the uses for which they were originally granted, that is, to the maintenance of the civil governments of the islands in which they respectively arise : and it should be provided, by an act of parliament to be passed for that purpose, that they should hereafter be disposed of for those uses only, by virtue of warrants of the governours of those islands respectively, with the consents of the councils of the same, agreeably to the directions of the king's commissions to his governours of provinces concerning the disposal of publick money raised in them ; and not be liable to be disposed of by the warrants of the lords commissioners of the Treasury in England.

And,

And, as it is said that pensions have been granted to several persons by the Crown out of this revenue of the four and a half per cent. duties, the said persons should have other equal pensions assigned them in lieu of these, which should be payable out of the British sinking-fund; in order to prevent any appearance of hardship, or injustice, in making this useful reformation, and likewise to take away all pretence for delaying it,

The object of this and the two preceding regulations, concerning the king's quit-rents in America, and the civil offices in the several provinces, (which are now granted away by patents under the great seal of Great-Britain,) is to take from the Americans every possible ground of complaint against the government of Great-Britain for making a jobb of them, or considering them in no other view than as sponges to be squeezed by the Crown and its ministers of state, for the gratification of court-favourites and corrupt members of parliament; which are reproaches that have often been thrown out by the Americans, and sometimes not with-

The view and design of this and the two preceding regulations.

but an appearance of reason. In the present critical situation of affairs Great-Britain ought not only to redress the substantial grievances of America, but to endeavour, if possible, to remove her jealousies and suspicions, in order to regain her confidence and affection.

They ought
all to be made
by act of par-
liament.

And all these regulations, or reformati-
ons, ought to be made by acts of parliament, to
the end that they may be as binding and
permanent as possible.

To promise
never to esta-
blish bishops,
or tythes, in
any province
of America,
without the
consent of the
assembly of
such province.

Eleventhly, It would likewise be highly expedient to pass an act of parliament of a promissory nature, declaring, that no bishop should ever be established in any province of America; either by royal or parliamentary authority, until a petition shall have been presented by the assembly of such province to the king's majesty, desiring that such an establishment may be made amongst them: and that no attempts shall be made by either of those great authorities, to establish tythes, or any other legal payment, or contribution, in any of the said provinces for the maintenance of the clergy of the Church of England residing in the same, without the consent of the assembly of the same.

Twelfthly,

Twelfthly, It would be proper to increase the number of members of the councils of the royal governments in America, (which are governed only by the king's commissions, without charters,) to, at least, 24 ; and to appoint them to hold their said offices of counsellors of the provinces during their lives or good behaviour ; and to make the presence of 12, or 13, of the said members necessary to their acting *as a legislative council* in conjunction with the houses of assembly.

To amend the constitution of the councils in the royal governments of America.

The king might at the same time appoint a council consisting of only 12 or 13 members, to be *a council of advice and controul* upon the governour in the exercise of the other powers of his commission, that were not of a legislative kind. And seven of these should be sufficient to make a board, and do business. The members of this council might either be members of the other, or legislative, council, or not, as the king should please. And they should be perfectly independant of the governour, so as not to be liable to be either removed or suspended by him upon any pretence whatsoever ; but should be removeable

moveable at the pleasure of the king by his order in his privy council. And this matter, as well as all the other parts of this plan, should be settled in this manner by act of parliament, to make it as stable and permanent and satisfactory to the Americans as possible.*

To refrain
and regulate
the power of
exercising
martial law in
the provinces
of America.

Thirteenthly, It would be expedient to restrain the power of exercising martial law in the provinces, which is delegated to governours in their commissions under the great seal of Great-Britain, to those cases in which alone it may legally be exercised, that is, to cases of actual invasion and rebellion; and to those persons who are the only legal objects of it, that is, to the militia, or other bodies of armed men collected for the defence of the country against such invaders and rebels. This might be done by new-modelling the clause in the commissions of governours relating to this subject, in the manner I mentioned some little time ago in the course of our conversation on this subject.†

In

* See above, pages 643—684.

† See above, pages 708—765, and for the new clause, pages 760, 761, 762.

In the fourteenth place, I conceive it would be proper to revise the commissions of the governours of provinces, and amend them in some other particulars, besides that of the exercise of martial law, at least so far as to insert in them all those parts of the instructions under the royal signet and sign-manual which purport to convey any powers either to the governour alone, or to the governour and council together; to the end that the instructions may be reduced to their proper and legal office, of privately guiding and restraining the governour in the use he is to make of the powers publickly and legally delegated to him by his commission under the great seal:----if indeed it is ever necessary to give him any private instructions at all; as such instructions are communications of the royal Will and Pleasure that seem, in their nature, to be fitter for the use of ambassadors, employed in making treaties of peace or alliance, than for that of persons employed in the government of peaceable provinces according to known and certain laws.

To revise and amend the commissions of the governours of provinces in America.

In

To declare that Great-Britain will never require the Americans to contribute, in any mode whatsoever, towards the discharge of the publick debt of Great-Britain, that has been already contracted.

In the fifteenth place, I should think it would be good policy to declare, (though, perhaps, this is more than the Americans, in point of justice, can demand,) by resolutions in both houses of parliament, that it is not expedient to require the American colonies to contribute any thing towards the discharge of the publick debt of Great-Britain already contracted, in any mode whatsoever, whether by taxes to be imposed by the British parliament, or by grants of their own assemblies, or in any other manner whatsoever; but only that it is reasonable that they should contribute in a moderate proportion, suited to their several abilities, to such of *the future* expences of the British empire as are of a general nature, and relate to all the dominions of the Crown, and of which they will reap the benefit as well as the inhabitants of Great-Britain.

To offer a general act of pardon and oblivion to the Americans, upon condition of their returning to their duty.

In the sixteenth, and last, place, I believe it would be prudent to offer an act of pardon, indemnity, and oblivion to all the Americans who have offended the laws, upon their laying down their arms and returning to the obedience

obedience of the Crown within a limited time ; without making any exceptions whatsoever, not even of the most obnoxious persons.

By such a plan the principal causes of uneasiness and discontent amongst the Americans would, as I conceive, be taken away, and, consequently, if they are sincere in their declarations of a desire to continue connected with Great-Britain, (as it seems highly probable that all the colonies, except those of New-England, are ; and perhaps even in those colonies there may be many persons of the same disposition ;) it seems reasonable to hope that it would be generally approved and accepted by them. And yet the supreme authority of the parliament of Great-Britain would not be given up.*

A general remark on the foregoing plan of reconciliation.

* N. B. The reader is desired to recollect that this plan of reconciliation is adapted to the situation of our contest with America in July, 1775. But many of the propositions recommended in it seem fit to be adopted even at this time, (January 25, 1779,) if any plan of reconciliation at all can be now of any service. The principal articles of this plan were published in the *Additional Papers relating to the Province of Quebec*, pages 487, — 510, in June, 1776.

FRENCHMAN.

The importance of adopting it without delay.

As far as I can judge of the subject, I imagine such a plan of reconciliation would be likely to be attended with success, if Great-Britain were to adopt it immediately, before the mutual injuries and miseries of actual war between the two countries shall have alienated and imbittered the minds of the contending parties beyond all possibility of return to their former confidence and affection. And I therefore most sincerely wish it may be followed.—But now, as we have finished the discussion of this important subject, it is time to put an end to this conversation; which I do by most heartily acknowledging the obligations I lie under to you for the pains you have taken to satisfy my, (sometimes, perhaps, inordinate,) curiosity upon the various topics that have occurred in this discourse.

END OF THE THIRD DIALOGUE.





